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Coronavirus, Public Health

Existing medical parole program in Texas provides for limited release of certain seriously ill, elderly inmates

[July 9](#) — In response to the COVID-19 pandemic, many local, state, and federal criminal justice systems have been working since early spring to reduce the number of people held in correctional facilities to help limit the spread of the coronavirus and protect the health of inmates and staff.

Populations in some local jails have been reduced through various methods, reportedly including lower-cost bail in some cases and fewer people being sent to jail for low-level offenses. At the state level, the Texas Department of Criminal Justice (TDCJ) in April temporarily [halted](#) taking inmates from county jails in an effort to limit the spread of the virus. On July 1, TDCJ resumed taking inmates from county jails on a limited basis, while screening transferred inmates. The U.S. attorney general in March [directed](#) federal authorities to respond to the pandemic by using home confinement rather than federal prison for certain non-violent inmates and to consider inmates' age and health condition when assessing them for home confinement.

Some have proposed that Texas respond to the pandemic by increasing the number of inmates released on parole, prioritizing the elderly and those with serious health conditions. Decisions to release on regular parole generally do not focus on those factors, although the state has a medical parole program, known as medically recommended intensive supervision (MRIS), that bases release decisions on inmates' health, age, risk to public safety, and other criteria. The Board of Pardons and Paroles [announced](#) in March that it had made no changes due to the COVID-19 pandemic in the way it makes parole release decisions.

Regular parole. Texas law requires inmates to serve a certain percentage of their sentences, based on the offense for which they were convicted and other factors, before they are

eligible for release on regular parole. Under regular parole, the parole board makes release decisions based on [guidelines](#) that take into account an inmate's record and the severity of the offense, but parole panel members have discretion to vote outside the guidelines.

In fiscal 2019, the parole board considered about 78,350 cases for release on regular parole and approved about 36 percent of those considered. In fiscal 2018, the board considered about 80,500 cases and approved about 33 percent. Parole panels set the conditions of parole, such as where those released may live and treatment programs they must attend, and the Texas Department of Criminal Justice's (TDCJ) parole division oversees those released.

Medically Recommended Intensive Supervision. The medically recommended intensive supervision program allows inmates to be released before they are eligible for regular parole if specific criteria are met and if they are deemed not to be a threat to public safety. Under state law, inmates must be elderly, terminally ill, a person with mental illness or with an intellectual disability, or have a physical disability or a condition requiring long-term care. Under the program's definitions, inmates 65 years old or older are considered elderly and those considered terminally ill must have an incurable condition with a life expectancy of no more than six months.

Government Code [sec. 508.146](#) establishes the MRIS program and allows state prison inmates, except those sentenced to death or life without parole, to be released under the program. Release under MRIS is a two-step process. First, the inmate must be identified as meeting the program's criteria by the Texas Correctional Office on Offenders with Medical or Mental

(continued on page 2)

Impairments (TCOOMMI). Next, a parole panel must vote to release the inmate from prison. Releases must include a supervision plan.

Those convicted of serious and violent offenses listed in Code of Criminal Procedure [art. 42A.054](#) or of sex offenses included in the state's sex offender registry may be considered for MRIS only if they are terminally ill or have a medical condition requiring long-term care. Those convicted of sex offenses must meet the additional requirement of either being in a persistent vegetative state or having an organic brain syndrome with significant to total mobility impairment.

In MRIS cases considered by the parole board, the [statute](#) requires a parole panel to determine that an individual is not a threat to public safety, and anyone released under the program must have a plan that ensures appropriate supervision. Under the law, a parole panel must require as a condition of release that the individual remain under the care of a physician and in a medically suitable placement and TCOOMMI must make periodic reports to a parole panel on the individual's medical status. The current statute allows a parole panel to modify the conditions of release but does not provide a way for the parole board to revoke the release unless the parolee violates one of the conditions.

In fiscal 2019, about 2,900 inmates were screened for the MRIS program and about 200 cases presented for consideration, according to TDCJ. Most were prison inmates considered by the parole board, but under Code of Criminal Procedure arts. [42A.560](#) and [42A.561](#), state jail inmates also may be released to MRIS supervision by a sentencing judge using similar criteria.

The parole board approved 76 releases in fiscal 2019, and sentencing judges approved four. Of the 80 total releases, 62 were based on the inmate having a terminal illness and the rest on the need for long-term care. For fiscal 2018, 69 MRIS releases were approved. The total number being supervised through the MRIS program at the end of fiscal 2019 was 121, according to TDCJ. The number being supervised on MRIS on any specific date changes with deaths, sentences being discharged, and new releases under the program.

Emergency medical reprieves. Aside from parole, incarcerated individuals with health issues also may be released from prison through the clemency process if the parole board recommends and the governor grants an [emergency medical reprieve](#). The board considers applications for medical reprieves from inmates who are terminally ill with six months or less to live, who are totally disabled, or who have been denied release under the MRIS medical parole program. A medical reprieve delays or temporarily suspends a punishment and would result in an inmate being released.

In fiscal 2018, 64 applications for emergency medical reprieves were received by the Board of Pardons and Paroles, according to board data. After screening by the board's clemency section, none were sent to the board for a vote. In fiscal 2019, 132 were received, three sent to the board, and none recommended to the governor. As of the end of June, 68 had been received in fiscal 2020, two voted on by the board, one recommended to the governor, and none approved.

— Kellie A. Dworaczyk