

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

S

2

SENATE BILL 1480  
Judiciary I (Civil) Committee Substitute Adopted 5/15/07

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

Sponsors:

Referred to:

March 26, 2007

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 has progressed such that the inmate is incapacitated to the extent that he or she does not pose a 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 inmates who are permanently and totally disabled, terminally ill, or geriatric.
- (6) "Medical release plan" means a comprehensive written medical care plan that is specific to the inmate and includes, at a minimum, the proposed course of treatment, the proposed site for treatment and

1 posttreatment care, and the financial program in place to cover the cost  
2 of this plan for the duration of the medical release.

3 (7) "Permanently and totally disabled" describes an inmate who, as  
4 determined by a licensed physician, suffers from permanent and  
5 irreversible physical incapacitation as a result of an existing physical  
6 or medical condition that was unknown at the time of sentencing, or  
7 since the time of sentencing, has progressed to render the inmate  
8 permanently and totally disabled, such that the inmate does not pose a  
9 public safety risk.

10 (8) "Terminally ill" describes an inmate who, as determined by a licensed  
11 physician, has an incurable condition caused by illness or disease that  
12 was unknown at the time of sentencing, or since the time of  
13 sentencing, has progressed to render the inmate terminally ill, and that  
14 will likely produce death within six months, and that is so debilitating  
15 such that the inmate does not pose a public safety risk.

16 **"§ 15A-1369.1. Authority to release.**

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

22 **"§ 15A-1369.2. Eligibility.**

23 (a) Except as otherwise provided in this section, notwithstanding any other  
24 provision of law, an inmate is eligible to be considered for medical release if the  
25 Department determines that the inmate is:

- 26 (1) Diagnosed as permanently and totally disabled, terminally ill, or  
27 geriatric under the procedure described in G.S. 15A-1369.3(b)(1); and  
28 (2) Incapacitated to the extent that the inmate does not pose a public safety  
29 risk.

30 (b) Persons convicted of a capital felony or a Class A, B1, or B2 felony and  
31 persons convicted of an offense that requires registration under Article 27A of Chapter  
32 14 of the General Statutes shall not be eligible for release under this Article.

33 **"§ 15A-1369.3. Procedure for medical release.**

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

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

- 40 (1) The Department medical director, or a designee of the director who is  
41 a licensed physician, shall review the case of each inmate who meets  
42 the eligibility requirements for medical release set forth in G.S.  
43 15A-1369.2. Any physician who examines an inmate being considered  
44 for medical 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.

11           (c) If the Department determines that the inmate meets the criteria for release, the  
12           Department shall forward its referral and medical release plan for the inmate to the  
13           Commission. The Department shall complete the risk assessment and forward its  
14           referral and medical release plan within 45 days of receiving a request, petition, or  
15           recommendation for release.

16           (d) The Commission shall make a determination of whether to grant medical  
17           release within 15 days of receiving a referral from the Department for release of a  
18           terminally ill inmate and within 20 days of receiving a referral from the Department for  
19           release of a permanently and totally disabled inmate or a geriatric inmate. In making the  
20           determination, the Commission shall make an independent assessment of the risk for  
21           violence and recidivism that the inmate poses to society. The Commission also shall  
22           provide the victim or victims of the inmate or the victims' family or families with an  
23           opportunity to be heard.

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

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

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