

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2008-2
SENATE BILL 1480**

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 and psychosocial care plan that is specific to the inmate and includes, at a minimum:
 - a. The proposed course of treatment;
 - b. The proposed site for treatment and post-treatment care;
 - c. Documentation that medical providers qualified to provide the medical services identified in the medical release plan are prepared to provide those services; and
 - d. The financial program in place to cover the cost of this plan for the duration of the medical release, which shall include eligibility for enrollment in commercial insurance, Medicare, or Medicaid or access to other adequate financial resources for the duration of the medical release.
- (7) "Permanently and totally disabled" describes an inmate who, as determined by a licensed physician, suffers from permanent and irreversible physical incapacitation as a result of an existing physical or medical condition that was unknown at the time of sentencing or, since the time of sentencing, has progressed to render the inmate permanently and totally disabled, such that the inmate does not pose a public safety risk.

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

"§ 15A-1369.1. Authority to release.

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

"§ 15A-1369.2. Eligibility.

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

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

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

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

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

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

- (1) The Department medical director, or a designee of the director who is a licensed physician, shall review the case of each inmate who meets the eligibility requirements for medical release set forth in G.S. 15A-1369.2. Any physician who examines an inmate being considered for medical release shall prepare a written diagnosis that includes:
 - a. A description of any and all terminal conditions, physical incapacities, and chronic conditions; and
 - b. A prognosis concerning the likelihood of recovery from any and all terminal conditions, physical incapacities, and chronic conditions.
- (2) The Department shall make an assessment of the risk for violence and recidivism that the inmate poses to society. In order to make this assessment, the Department may consider such factors as the inmate's medical condition, the severity of the offense for which the inmate is incarcerated, the inmate's prison record, and the release plan.

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

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

determination, the Commission shall make an independent assessment of the risk for violence and recidivism that the inmate poses to society. The Commission also shall provide the victim or victims of the inmate or the victims' family or families with an opportunity to be heard.

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

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

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

(a) The Commission shall set reasonable conditions upon an inmate's medical release that shall apply through the date upon which the inmate's sentence would have expired. These conditions shall include:

- (1) That the released inmate's care be consistent with the care specified in the medical release plan as approved by the Commission;
- (2) That the released inmate shall cooperate with and comply with the prescribed medical release plan and with reasonable requirements of medical providers to whom the released inmate is to be referred to continued treatment;
- (3) That the released inmate shall be subject to supervision by the Division of Community Corrections and shall permit officers from the Division to visit the inmate at reasonable times at the inmate's home or elsewhere;
- (4) That the released inmate shall comply with any conditions of release set by the Commission; and
- (5) That the Commission shall receive periodic assessments from the inmate's treating physician.

(b) The Commission shall promptly order an inmate returned to the custody of the Department to await a revocation hearing if the Commission receives credible information that an inmate has failed to comply with any reasonable condition set upon the inmate's release. If the Commission subsequently revokes an inmate's medical release for failure to comply with conditions of release, the inmate shall resume serving the balance of the sentence with credit given only for the duration of the inmate's medical release served in compliance with all reasonable conditions set forth pursuant to subsection (a) of this section. Revocation of an inmate's medical release for violating a condition of release shall not preclude an inmate's eligibility for any other form of parole or release provided by law but may be used as a factor in determining eligibility for that parole or release.

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

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

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

SECTION 2. This act is effective when it becomes law.
In the General Assembly read three times and ratified this the 2nd day of June,
2008.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:48 a.m. this 10th day of June, 2008