

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

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**SENATE BILL 1480
Judiciary I (Civil) Committee Substitute Adopted 5/15/07
House Committee Substitute Favorable 5/21/08**

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

Sponsors:

Referred to:

March 26, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO DIRECT THE DEPARTMENT OF CORRECTION AND THE
3 POST-RELEASE SUPERVISION AND PAROLE COMMISSION TO PROVIDE
4 FOR MEDICAL RELEASE OF NO-RISK INMATES WHO ARE EITHER
5 PERMANENTLY AND TOTALLY DISABLED, TERMINALLY ILL, OR
6 GERIATRIC.

7 The General Assembly of North Carolina enacts:

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

"Article 84B.

"Medical Release of Inmates.

12 **§ 15A-1369. Definitions.**

13 For purposes of this Article, the term:

- 14 (1) "Commission" means the Post-Release Supervision and Parole
15 Commission.
- 16 (2) "Department" means the Department of Correction.
- 17 (3) "Geriatric" describes an inmate who is 65 years of age or older and
18 suffers from chronic infirmity, illness, or disease related to aging that
19 has progressed such that the inmate is incapacitated to the extent that
20 he or she does not pose a public safety risk.
- 21 (4) "Inmate" means any person sentenced to the custody of the
22 Department of Correction.
- 23 (5) "Medical release" means a program enabling the Commission to
24 release inmates who are permanently and totally disabled, terminally
25 ill, or geriatric.
- 26 (6) "Medical release plan" means a comprehensive written medical and
27 psychosocial care plan that is specific to the inmate and includes, at a
28 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

1 petition for release filed by the inmate, the inmate's attorney, or the inmate's next of kin
2 or upon a recommendation from within the Department.

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

5 (1) The Department medical director, or a designee of the director who is
6 a licensed physician, shall review the case of each inmate who meets
7 the eligibility requirements for medical release set forth in
8 G.S. 15A-1369.2. Any physician who examines an inmate being
9 considered for medical release shall prepare a written diagnosis that
10 includes:

11 a. A description of any and all terminal conditions, physical
12 incapacities, and chronic conditions; and

13 b. A prognosis concerning the likelihood of recovery from any and
14 all terminal conditions, physical incapacities, and chronic
15 conditions.

16 (2) The Department shall make an assessment of the risk for violence and
17 recidivism that the inmate poses to society. In order to make this
18 assessment, the Department may consider such factors as the inmate's
19 medical condition, the severity of the offense for which the inmate is
20 incarcerated, the inmate's prison record, and the release plan.

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

26 (d) The Commission shall make a determination of whether to grant medical
27 release within 15 days of receiving a referral from the Department for release of a
28 terminally ill inmate and within 20 days of receiving a referral from the Department for
29 release of a permanently and totally disabled inmate or a geriatric inmate. In making the
30 determination, the Commission shall make an independent assessment of the risk for
31 violence and recidivism that the inmate poses to society. The Commission also shall
32 provide the victim or victims of the inmate or the victims' family or families with an
33 opportunity to be heard.

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

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

40 **"§ 15A-1369.4. Conditions of medical release.**

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

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

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

26 **"§ 15A-1369.5. Change in medical status.**

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

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

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