Delaware Avenues of Release: Commutation, Compassionate Release, & Medical Parole

A self-advocacy guide to Delaware's three pathways to early release from incarceration

DISABILITY RIGHTS DELAWARE
COMMUNITY LEGAL AID SOCIETY INC.

CURRENT AS OF SEPTEMBER 2026

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Introduction

In July 2025, Delaware passed a new law that changes how people in prison can ask for early release. Senate Bill 10, also known as the Richard "Mouse" Smith Compassionate Release Act ("SB10"), is named for a longtime Delaware NAACP leader and civil rights advocate, Mr. Richard "Mouse" Smith, who passed away earlier that year. The law took effect on January 10, 2026, six months after it was signed by Governor Matt Meyer. SB10 rewrote Delaware's previous main compassionate release rule. It removes the Board of Parole from the court process, lets someone ask the court directly even if the prison system has not recommended them for compassionate release, guarantees a right to a lawyer, and creates new ways to qualify based on age and time served, even for people serving mandatory sentences.

The changes created by SB10 left Delaware with three separate ways that someone can be released early, and they overlap in some confusing ways. Those three avenues are called: 1) **commutation**; 2) **compassionate release** (this guide will refer to the current compassionate release law as "SB10"); and 3) **medical parole**. You may see compassionate release or medical parole referred to as "sentence modification," even though lawyers, courts, and advocates often call it compassionate release, which adds to the confusion.

This guide is meant to explain how the three distinct options for release operate in Delaware. Because SB10 is so new, there is limited guidance and currently only a few court rulings showing how it will work in practice. However, the language of the law that this guide relies on makes changes apparent.

Overview

	Commutation	Compassionate Release	Medical Parole
Legal basis - This row contains the law (called code) number and/or part of the Delaware Consitution that is the basis for the path of early release.	Delaware Constitution article VII; 11 Delaware Code §§ 4361–4364	11 Delaware Code § 4217, as amended by S.B. 10 (eff. 1/10/26)	11 Delaware Code § 4346(e)
Decision-maker	Governor, on written recommendation of the Board of Pardons	The court that issued the sentencing order	Board of Parole
Who can apply?	The incarcerated person, by written petition	Department of Correction ("DOC"), or the person/attorney directly	DOC recommendation, or (now under SB10) the person may request directly
Core grounds	No grounds are set by law; an applicant explains in writing why they are asking for a commutation	Serious medical illness/infirmity; OR age 60+ with 15+ years served (based on rehabilitation); OR 25+ years served (based on rehabilitation)	Same "good cause" standard as SB10, limited to serious medical illness/infirmity
Minimum time served	None specified	None for medical grounds; 15 or 25 years for the age/rehabilitation grounds; violent felonies otherwise need 1/2 time served, and mandatory terms needs mandatory portion served	None specified – Board may release "without regard to time already served"
Effect	Reduces time served or changes release terms; conviction remains on record	Court reduces custody level or time to be served	Release to parole supervision; revocable at any time
Reapplication after denial	The Board of Pardons has set a waiting period of 33 months for first-degree murder and 15 months for all other crimes	3 years if denied for risk or lack of good cause; 60 days for a medical denial if circumstances materially changed	Not specified by statute

Commutation

A commutation, or commuted sentence, shortens someone's prison sentence or changes the terms of their release. It does not erase the conviction (that is what a pardon does). Commutation does not have eligibility rules written into the law, but the Board of Pardons will not accept an application if someone has an appeal or other court case about the conviction pending. Ultimately, it is up to the Governor's discretion.

Who decides? Delaware's 1897 Constitution set up a Board of Pardons ("the Board") made up of the Lieutenant Governor, Secretary of State, State Treasurer, State Auditor, and the head of the Court of Chancery. For all commutations, a majority of the Board has to approve it first. The Governor can't act without that approval, though the Governor does not have to agree with the Board's approval.

How does someone apply? Applications are in writing, through the Secretary of State's office. The applicant needs an up-to-date Offender Status Sheet from their housing-unit counselor and certified court records and sentencing orders. The applicant then fills out the Application for Commutation with a written explanation of why they are asking for relief. Applicants can follow the Board's Commutation Checklist step by step. Applications are handled in the order they are received. The application and checklist can be found at: https://pardons.delaware.gov/how-apply-commutation/

What happens after an application is submitted? After the application is filed, the Secretary of State asks the Board of Parole for a report on the applicant's record and how far their rehabilitation has come. Copies are sent to the Board. When hearings occur, they are open to the public. If a majority votes to recommend a commutation, that recommendation goes to the Governor. If the Board denies the application, the person generally cannot reapply for 15 months (33 months if the case involves first-degree murder).

Compassionate Release

This is when a judge, not the Governor or the Board of Pardons, reduces how much prison time someone has to serve, or moves them to a lower security level. A request for compassionate release is filed in the same court that sentenced the individual. Compassionate release is available to anyone serving more than one year of Level V (full incarceration) time. The compassionate release law was changed by SB10 in 2025. All information below reflects the current version of the law.

Three ways to qualify:

1. You have a serious medical illness or condition, and that is the *only* reason for your application. There is no minimum amount of time you need to have served first; OR
2. You are 60 years of age or older, you have served at least 15 years of your sentence, and your application is based on your rehabilitation; OR
3. You have served at least 25 years of your sentence and your application is based on your rehabilitation.

These pathways apply even if someone is serving a mandatory sentence. People who don't fit one of these three paths may still be able to apply once they have served at least half of a violent felony sentence, or the full mandatory portion of a mandatory sentence.

What does a judge consider? Three things: 1) that the person qualifies in the first place; 2) that there is good cause; and 3) that releasing the person would not put the community, a victim or witness, or the person themselves at risk. "Good cause" can mean rehabilitation, serious illness, or the prison being overcrowded.

What counts as a serious medical condition? The law spells out four different categories: 1) *cognitively incapacitated* – something like dementia that impacts a person's ability to think, seriously affecting a person's daily tasks like eating, using the bathroom, dressing, or bathing;

Compassionate Release (Continued)

2) *permanently physically incapacitated* – this is when someone physically cannot care for themselves and needs help with most daily tasks, or being unable to do any real physical activity; 3) *severely ill* – a serious, ongoing condition that needs a lot of medical treatment, has little chance of getting better, and makes rehabilitation (meaning the work a person does while incarcerated to grow, make positive changes, and prepare to return to the community) hard; and 4) *terminally ill* – a condition doctors expect, to a reasonable degree of certainty, will cause death within 18 months.

Who can file for compassionate release? The Delaware Department of Correction ("DOC") must review everyone's eligibility every two years, and if it recommends a modification, it files the application (only with the individual's consent). If DOC says someone is not recommended, DOC must explain why in writing. In this instance, an individual or their attorney can still file for compassionate release, attaching DOC's written reasons. *If the application is based on serious illness, the person or their attorney can file directly at any time. They do not have to wait for DOC at all.*

Is there a right to a lawyer? DOC must tell the person that they have a right to counsel. They may hire their own lawyer, or may ask the court for a referral to the Office of Defense Services ("ODS"). If the application is not dismissed, the court will then refer the person to ODS.

Will any victim be informed? The court has to give the Department of Justice and any victim a real chance to weigh in before granting an application. For illness-based applications, the court can also make DOC submit a medical release plan, including where the person will get treatment, what happens after release, and how treatment will be paid for.

Compassionate Release (Continued)

What do the hearings look like? No hearing is actually required. The statute simply says that the court "may grant or deny the application[…] or may request additional information." The court can do that without holding any further hearing.

In three 2026 court rulings, compassionate release applications were decided entirely on the papers submitted, with no hearing at all. The court decided each one in a written order. In *State v. Chattin*, from March of 2026, the court dismissed the case because the individual had not served the mandatory part of his sentence. *State v. Chattin*, I.D. No. 1510013711 (Del. Super. Ct. Mar. 17, 2026). Similarly, in *State v. Fulton*, from February of 2026, the court dismissed the case of someone over age 60 who had not yet served 15 years, and his application raised legal arguments, so it was not based solely on rehabilitation. *State v. Fulton*, I.D. No. 1508009967 (Del. Super. Ct. Feb. 12, 2026). In *Freeman v. State*, decided in July of 2026, the individual had already been denied on medical grounds. He tried to apply again, but the court decided that he could not show that anything had materially changed in his medical circumstances since his earlier denial, as SB10 requires. *Freeman v. State*, Case ID 2011013643 (Del. Super. Ct. July 15, 2026).

If the court denies the application because of risk or lack of good cause, the person can't reapply for up to 3 years. The court sets the exact waiting period. If the court denies an application on medical grounds, an individual may re-apply in 60 days, as long as there is a material change.

Medical Parole

This law was updated at the same time as SB10, effective January 10, 2026. Here's how it works now: if someone would qualify for release under the serious illness standard, the Department of Correction ("DOC") shall recommend their case to the Board of Parole, or the person can ask directly. If the Board agrees that there is good cause and releasing the person would not be a substantial risk, it can grant parole no matter how much time is left on the sentence. The Board can attach any conditions it wants, and it can revoke parole at any time, for any reason, without even holding a hearing, sending the person back to DOC custody.

Historical Perspective: What Was Different Before January of 2026?

Before SB10, the medical parole rule worked differently in two ways. First, only DOC could initiate the process. A person could not ask on their own. Second, the Board could not actually grant release until a place to send the person for treatment/residence had already been lined up. The old law said, word for word: "The Board of Parole shall parole in such case only when arrangements have been made for the treatment of the person in some institution." SB10 removed both of those requirements. Today's version has no placement requirement and lets an individual ask for medical parole directly. Since this is such a recent change, DOC's actual day-to-day practice may not have fully caught up yet.

This rule change more closely aligns the medical parole process with the medical track of SB10 (compassionate release). The same standards are used for "serious illness" and "substantial risk," but the deciding body for medical parole is the Board of Parole instead of a judge, and there is no minimum time served required.

A Lingering, Confusing Overlap

Delaware's general parole chapter (§§ 4341–4354) says that anyone sentenced under the 1989 Truth-in-Sentencing law (meaning the crime happened on or after June 30, 1990) is not eligible for "parole" under the chapter at all. For a long time, that meant medical parole really only applied to people sentenced before Truth-in-Sentencing. But the newly amended law points straight at SB10, which covers people serving more than a year, which is exactly the Truth-in-Sentencing population. It is not yet completely clear how these provisions will function together.

Historical Perspective: How Compassionate Release and Medical Parole Relate

These were never the same program, but SB10 has closed part of the gap between them. Before January 10, 2026, the two worked differently in three ways:

1. *Different tests*: The old compassionate release law had its own "good cause" standard. The old medical parole law asked something different – could DOC provide the needed treatment itself? That is a question about capacity, not about how sick someone is.
2. *Different people, mostly*: Medical parole lives in the general parole chapter of Delaware law, which excludes people sentenced under the Truth-in-Sentencing law entirely. So medical parole mostly served an older, shrinking group (people sentenced before June 30, 1990) while compassionate release served everyone sentenced after.
3. *Different rules for how it worked*: Only DOC could start a medical parole case, and the Board could not grant the release until a treatment facility was set up. Compassionate release never had that placement requirement.

Where we are now: After SB10 became law, at least two of the three gaps between the medical parole and compassionate release processes closed:

- The test is now the same, at least for medical cases. Medical parole now uses SB10's own definitions of serious illness and its "no substantial risk" standard.
- The general parole provisions have not been updated to remove the Truth-in-Sentencing exclusion, so it is not yet clear whether medical parole now applies to people sentenced after 1990.
- A person can ask for medical parole directly instead of waiting for DOC, and the Board no longer needs a treatment placement arranged before granting release.

Bottom line: Medical parole and compassionate release are closer than they used to be, but they are still two separate tools. They involve the same medical test, different decision-makers, and different outcomes.

Importantly: Even if the Truth-in-Sentencing exclusion has not formally been repealed, making it so individuals sentenced after 1990 cannot be medically paroled, ***SB10 carves out a release mechanism for individuals with serious illness distinct from medical parole.*** It is a separate avenue, but individuals with serious illness are *not* prevented from applying for compassionate release under SB10 just because they were sentenced after 1990. Thus, there is still an effective pathway for release for post-1990 sentencings.

Key Takeaways

Commutation is the only avenue with no legal eligibility rules at all. This makes it the broadest option on paper but also the slowest and most political since it needs both a Board recommendation and the Governor's sign-off.

Compassionate release and medical parole now run on the same legal standard. Medical parole now points straight at SB10, so both use the same "good cause" and "no substantial risk" standards and medical definitions. A judge decides in compassionate release matters, and the Board of Parole decides in the other. Only medical parole and the medical track of compassionate release have no minimum time-served requirement built in.

The age and time-served paths under compassionate release have nothing to do with health. They are based purely on being age 60+ with at least 15 years served, or having served at least 25 years at any age. These cases must be about rehabilitation, not illness.

A mandatory minimum sentence no longer automatically blocks relief under any of the three compassionate release paths**.**

Courts have been strict about enforcing the updated compassionate release eligibility rules so far in 2026. Falling short on time served is enough to get an application dismissed without a hearing.

The right to a lawyer is now written into the compassionate release law. This was not guaranteed before 2026.

The overarching goals of SB10 are to expand the pool of individuals who are eligible for compassionate release and create simpler and fairer pathways for incarcerated individuals to seek release. Since the law has been effective for less than a year, only time will tell if the Act reaches its goals in practice.

Sources

- **11 Del. C. Ch. 42, § 4217** (https://delcode.delaware.gov/title11/c042/index.html#4217)
- **11 Del. C. Ch. 43, Subch. IV, § 4346** (https://delcode.delaware.gov/title11/c043/sc04/index.html)
- **Delaware Board of Pardons - How to Apply for a Commutation** (https://pardons.delaware.gov/how-apply-commutation/)
- **Delaware Board of Pardons - About the Board** (https://pardons.delaware.gov/about-board-pardons/)
- **Delaware Public Archives - Board of Pardons history** (https://archives.delaware.gov/delaware-agency-histories/board-of-pardons/)
- **Delaware Board of Parole - Rules (Medical Parole)** (https://boardofparole.delaware.gov/rules/)
- **Delaware Board of Parole - FAQ** (https://boardofparole.delaware.gov/frequently-asked-questions/)
- **S.S.1 for S.B.10, 153rd Gen. Assembly, as amended by House Amendment No. 3** (https://legis.delaware.gov/BillDetail/142344)
- **State v. Chattin, I.D. No. 1510013711 (Del. Super. Ct. Mar. 17, 2026)** (https://courts.delaware.gov/Opinions/Download.aspx?id=393080)
- **State v. Fulton, I.D. No. 1508009967 (Del. Super. Ct. Feb. 12, 2026)** (https://courts.delaware.gov/Opinions/Download.aspx?id=391620)
- **Freeman v. State, Case ID 2011013643 (Del. Super. Ct. July 15, 2026).** (https://courts.delaware.gov/opinions/download.aspx?id=398140)
- **WDEL, Governor Meyer Signs Compassionate Release Act Honoring Civil Rights Leader** (wdel.com/news/gov-meyer-signs-compassionate-release-act-honoring-delaware-civil-rights-leader/article_c22d74e7-a401-4440-b94b-0c7b222bf234.html)
- **Delaware General Assembly bill tracker, S.B.10 / S.S.1 for S.B.10 (introduction, passage, and signing dates)** (https://legiscan.com/DE/bill/SB10/2025)
- **Superior Court of Delaware, Motion for Reduction/Modification of Sentence** (form, last dated 2008) (https://courts.delaware.gov/forms/)
- **Truth in Sentencing Act of 1989, 67 Del. Laws, c. 130 (originally S.B. 58)** (https://legis.delaware.gov/SessionLaws/Chapter?id=21933)