



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

September 6, 2023

Burl Cain
Commissioner, Mississippi Department of Corrections
301 North Lamar Street
Jackson, Mississippi 39202

Re: Habitual Offender Eligibility for Conditional Medical Release

Dear Commissioner Cain:

The Office of the Attorney General has received your request for an official opinion.

Background

According to your request, the Mississippi Department of Corrections has several inmates who meet the criteria of “medically frail” and would thus be eligible for conditional medical release, also called medical parole, under Mississippi Code Annotated Section 47-7-4. You note that these inmates were sentenced as habitual offenders and are, therefore, not eligible for parole pursuant to Sections 47-7-3, 99-19-81, and 99-19-83.

Question Presented

Are habitual offenders eligible for conditional medical release under Section 47-7-4?

Brief Response

Conditional medical release in Section 47-7-4 is separate and distinct from parole as set forth in Section 47-7-3 and pertains to inmates determined to be “medically frail.” Unlike Section 47-7-3, Section 47-7-4 does not explicitly exclude habitual offenders from eligibility for conditional medical release. Therefore, a habitual offender is eligible for conditional medical release under Section 47-7-4 if the offender is determined to be “medically frail” as defined by Section 47-7-4(2)(b) and also meets the conditions in Section 47-7-4(2)(c), including that the offender was not sentenced to capital punishment, was not convicted as a criminal sex offender, and does not pose a public safety risk or flight risk.

Applicable Law and Discussion

Section 47-7-3(1)(a) regarding parole eligibility for habitual offenders states, “[e]xcept as provided in Sections 99-19-81 through 99-19-87, no person sentenced as a confirmed and habitual criminal shall be eligible for parole.” However, conditional medical release as authorized in Section 47-7-4(2) is distinct from parole provided for in Section 47-7-3. Though also known as medical parole, conditional medical release does not allow inmates to be released from corrections custody, but instead, transferred to a licensed special care facility for paroled inmates as determined by the State Parole Board. Further, Section 47-7-4(2)(c)(xi) requires the inmate be returned to incarceration if the inmate recovers from the condition causing him or her to be medically frail. The exclusions associated with those eligible for parole set forth in Section 47-7-3(1) are different than the exclusions associated with those eligible for conditional medical release set forth in Section 47-7-4(2)(c), and while habitual offenders are listed in the former, they are not listed in the latter.

To be eligible for conditional medical release pursuant to Section 47-7-4, the inmate must be “medically frail” as defined by Section 47-7-4(2)(b), and the conditions of Section 47-7-4(2)(c) must be met. Medically frail “means an individual who has a mental or physical medical condition from which he or she, to a reasonable degree of medical certainty, is not expected to recover, and as a result cannot perform daily living activities and who is a minimal threat to society as a result of the mental or physical medical condition.” Miss. Code Ann. § 47-7-4(2)(b). However, pursuant to Section 47-7-4(2)(c)(i) and (ii), an inmate who has been sentenced to capital punishment, or an inmate who has been convicted as a criminal sex offender is not eligible for medical parole. Also, an inmate must not pose a public safety risk or risk of flight as determined by the State Parole Board. Miss. Code Ann. § 47-7-4(2)(c)(iii).

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Gregory Alston*

Gregory Alston
Special Assistant Attorney General