

Petitions for Mercy

Policy Statement

Policy, Strategic Services & Planning

Justice Health

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1 Definitions

Terms	Description
Informed consent	The process during which a medical practitioner provides information to the patient about their condition that is sufficient to enable the patient to make a decision about whether or not to proceed with the recommended treatment in their particular circumstances. Consent must be given voluntarily.
Prisoner's representative	In this context, a prisoner's representative is a third party who is an authorised guardian under the <i>Guardian and Administration Act 1986</i> .

2 Scope

The policy applies to Justice Health staff and contracted health service providers in the Victorian prison environment. It does not apply to provision of health care outside the prison environment.

This policy applies to any petition for mercy made on health grounds for a prisoner in Victoria, even when the prisoner is being treated outside the prison system (e.g. a public hospital).

3 Purpose

The purpose of this policy is to clarify the obligations of Justice Health and contracted health service providers with respect to petitions for mercy for prisoners.

4 Relevant legislation

Sentencing Act 1991

Section 107 of the Act provides for the Governor to extend mercy to a prisoner, even before the end of a non-parole period, on medical grounds.

Guardianship and Administration Act 1986

Where a prisoner lacks legal capacity, an authorised guardian may exercise the right to petition for mercy on the prisoner's behalf. Section 24 of the Act covers the authority of a guardian.

Criminal Procedure Act 2009

Section 327 (1)(a) of the Act describes the power of the Attorney-General to refer a petition to the Court of Appeal for re-hearing. The Court of Appeal hears the case as if it were an appeal.

Freedom of Information Act 1982

Section 11 of the act covers the right of access to information held by the Department of Justice & Regulation, including a prisoner's health information.

Health Records Act 2001

Schedule 1 of the Act articulates health privacy principles. Health privacy principle one explains when and how health information can be collected. Health privacy principle two outlines the provisions for disclosing health information.

Section 25 describes the right of an individual to access their health information, held by a health service provider.

Section 85 allows an authorised representative to consent to the release of health information about prisoners who do not have capacity to provide consent themselves.

5 Policy statement

All contracted health service providers should have in place organisational and local policies and procedures outlining the circumstances and processes associated with petitions for mercy. Policies and procedures should be consistent with this policy.

5.1 Royal prerogative of mercy

Section 107 of the *Sentencing Act 1991* states that:

- ◆ the Governor may, in any case in which he or she is authorised on behalf of Her Majesty to extend mercy to any person under sentence of imprisonment, do so by directing that he or she be released, even before the end of a non-parole period:
 - ◆ on giving of an undertaking or
 - ◆ on parole under and subject to the *Corrections Act 1986* or the *Children, Youth and Families Act 2005*, as the case requires.

Petitions for the exercise of the royal prerogative of mercy may sometimes be made by serving prisoners on medical grounds, or where the prisoner lacks legal capacity by a third party who is an authorised guardian under the *Guardianship and Administration Act 1986*.

Petitions for mercy are made directly to the Attorney-General or the Office of the Governor. In cases where petitions are addressed to a member of parliament, they will be referred to the Attorney-General and the Governor.

In most circumstances, petitions will not be considered where the petitioner is eligible for parole or release. In that case the petitioner should apply for release to the Adult Parole Board.

5.2 Misdirected petitions

Justice Health staff or contracted health service providers may become aware of a misdirected petition, for example, where the petition is based on health grounds and erroneously addressed to Justice Health or a health service provider.

Where a petition is misdirected, the person in receipt of the petition or a delegate should immediately notify the Director, Justice Health in writing.

The Director, Justice Health will then formally advise the petitioner in writing to address their petition either to the Attorney General, or to the Governor.

5.3 Medical reports in support of petitions

On request by a prisoner or prisoner's representative, Justice Health will facilitate the preparation, without prejudice, of any health records reasonably necessary for the purposes of preparing a petition for mercy on medical grounds.

The existence of a petition for mercy does not obviate the need to adhere to principles of confidentiality and privacy in respect of health information. Under normal circumstances, where the petitioner is a third party, health information should be released to the petitioner only with the informed consent of the prisoner.

Justice Health will notify the Commissioner Corrections of the receipt of a request for health information in support of a petition for mercy.

5.4 Release of health information to third parties

Requests for access to prisoner health information, whether by a prisoner or their agent, must be made and dealt with as a Freedom of Information request. Subject to certain exemptions, people have a right under the Freedom of Information Act 1982 to obtain access to documents held by the Department of Justice & Regulation, including their health information.

Prisoner health information may be used and disclosed with the consent of the prisoner, or by an authorised representative on behalf of the prisoner if he or she is incapable of giving consent, within the meaning of s 85(3) of the Health Records Act 2001. To expedite release of information, it is recommended that prisoners complete an 'authority to release medical information' form.

6 Related policies and procedures

This policy forms part of a suite of End of Life policies by Justice Health:

- ◆ Resuscitation orders
- ◆ Advance care planning
- ◆ Petitions for mercy
- ◆ Refusal of treatment
- ◆ Organ and/or tissue donation

7 Consultation

The following groups have been consulted in the development of this policy:

- ◆ Justice Health Clinical Advisory Committee
- ◆ Corrections Victoria
- ◆ Correct Care Australasia
- ◆ St Vincent's Correctional Health Service

8 Document information

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Document approval

This document requires the following approval:

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Audience

The audience for this document is Justice Health staff and contracted health service providers.