

# COVID-19 and Conditional Releases from Federal Prisons

**This fact sheet provides legal information about conditional release from federal prisons.**

In Canada, federal prisons are governed by [Corrections and Conditions Release Act](#) (“CCRA”), and the [Corrections and Conditional Release Regulations](#) (“The Regulations”). Both the CCRA and the Regulations provide for a number of alternatives to federal custody, including medical unescorted temporary absences (“UTA”) and parole by exception (“PBE”).

## MEDICAL UNESCORTED TEMPORARY ABSENCES

**What is a medical unescorted temporary absence?**

The facility’s institutional head or the Commissioner may grant a medical UTA to allow an incarcerated person to undergo medical examination or treatment that cannot be reasonably provided in the prison. This allows an incarcerated person to leave a federal prison without Correctional Services staff, and may be for an unlimited period of time.

**Who is eligible for a medical UTA?**

Usually, an incarcerated person is required to serve a minimum portion of their sentence

before being eligible to apply for a UTA. People serving life sentences, indeterminate sentences, or young people serving sentences for first or second-degree murder have separate “time served” requirements.

**An incarcerated person does not need to serve a minimum amount of their sentence if they are applying for a medical UTA because they need emergency medical treatment.**

Before granting a medical UTA, the following four conditions must be met:

1. the incarcerated person will not, by reoffending, present an undue risk to society during their absence;
2. it is desirable for the person to be absent for medical reasons;
3. the person’s behavior while incarcerated does not preclude authorizing the absence; and
4. a structured plan for the absence has been prepared.

Persons that have medical conditions making them vulnerable to serious adverse impacts of COVID-19 may qualify for a medical UTA so they can self-isolate in the community.

Relevant medical conditions include:

- chronic lung disease (e.g., COPD, moderate to severe asthma, emphysema);
- immunocompromised conditions (e.g., HIV/AIDS and a low CD4 cell count or not receiving HIV treatment, lupus, cancer);
- diabetes;
- cardiovascular disease: (e.g., serious heart conditions including heart failure, coronary artery disease, congenital heart disease, cardiomyopathies, and pulmonary hypertension (high blood pressure in the lungs));
- chronic liver or renal disease;
- people with severe obesity (e.g., a body mass index of 40 or higher);
- people who have experienced bone marrow or organ transplantation;
- people who use oral or intravenous corticosteroids or other immunosuppressant medication that lower the body's ability to fight some infections (e.g., mycophenolate, sirolimus, cyclosporine, tacrolimus, etanercept, rituximab); or
- people over 50 years old.

To date, incarcerated persons granted COVID-19 related medical UTAs have also had other underlying medical conditions requiring treatment in the community. The underlying medical conditions created a heightened vulnerability if these people contracted COVID-19. There is still some uncertainty as to whether self-isolation in

the community due to the inability to reasonably isolate in prisons, is a sufficient ground to grant a medical UTA on its own.

Incarcerated persons who **do not** qualify for a medical UTA:

1. Persons who are classified as maximum security
2. Persons who are being held past their statutory release date until their warranty expiry, or
3. Persons who are being held in immigration detention subject to a removal order who have not reached their full parole eligibility date

## PAROLE BY EXCEPTION

### What is parole by exception?

Parole by exception ("PBE") permits an exceptional parole consideration for incarcerated persons who are not yet eligible for partial or full parole and only under certain circumstances. Only the Parole Board of Canada can approve a PBE.

### Who is eligible for parole by exception?

A PBE may be granted at any time to an incarcerated person if:

1. They are terminally ill;
2. Their physical or mental health is likely to suffer serious damage with continued confinement;
3. Their continued confinement would constitute an excessive hardship that was not reasonably foreseeable at the time of sentencing; or

4. They are subject of an order of surrender under the *Extradition Act* and they are to be detained until surrendered.

However, just as with day parole and full parole, PBE will only be granted where the Parole Board of Canada is satisfied that the incarcerated person “will not, by reoffending, present an undue risk to society and that their release will help facilitate their reintegration as a law-abiding citizen.”

**Except for those people suffering from a terminal illness, parole by exception is not available for incarcerated persons serving either a life sentence or an indeterminate sentence.**

### APPLYING FOR A MEDICAL UTA OR PAROLE BY EXCEPTION

Before making an application for a medical UTA or PBE, it is important to gather as much information and supporting documentation regarding medical conditions, community risk management, and a proposed structured release plan, as possible.

**Medical Conditions:** identify any doctor diagnosed medical conditions, how long have they had the condition, what medication they are currently taking, and whether healthcare staff at the correctional facility are aware of the medical condition.

Medical opinion letters from medical professionals can also help strengthen an application. Medical opinion letters can

speak to the general kinds of pre-existing conditions prevalent amongst the incarcerated population worsened by COVID-19, or speak more specifically to an individual person’s physical and mental health conditions, the specific risks that flow from COVID-related vulnerabilities, and the medical care required by that individual.

**Not a risk to community:** demonstrate why they are not a risk to the community by showing that they have addressed their CSC risk factors and completed their correctional plan. Also, identify if they have been granted a UTA in the past, or if they have health conditions that would reduce or inhibit the risk of reoffending while released on parole.

**Structured release plan:** provide as many details as possible concerning where they will live, with whom, the accessibility of medical treatment, the ability to self-isolate effectively, community supervision plan, and any other relevant supports available upon release like employment, NA/AA, counselling, etc.

**Conditions of confinement:** provide as much information as possible regarding their current conditions of confinement, especially concerning their inability to self-isolate. For example, how many people are in their unit, how frequently is their cell and unit cleaned, and what kind of PPE is available.

## RESOURCES

For more information about conditional releases in federal prisons, please click [here](#). For help applying for a medical unescorted temporary absence or a parole by exception contact:

### Prisoners' Legal Services

#### Prisoners in British Columbia

During Covid-19 office closure, call the **Legal Services Society Call Centre 1-888-839-8889** for a referral.

When office re-opens, after getting a referral, prisoners can call PLS directly at:  
(Federal facility) 1-866-577-5245  
(Provincial facility) 1-604-636-0464  
Web: <https://prisonjustice.org/home/>

### Queen's Law Clinic

#### Federal Prisoners in Eastern Ontario Only

303 Bagot Street - Suite 500,  
Kingston, Ontario,  
K7K 5W7

Telephone [613-533-2102](tel:613-533-2102)

Fax: 613-533-3172

Office: Mon - Fri 8:30am – 4:30pm EST

Web: <https://queenslawclinics.ca/prison-law>