

# Early release rules for prisoners at end of life may be 'discriminatory,' say doctors

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Doctors are calling for reform to rules governing when terminally ill prisoners are suitable for early release on compassionate grounds (ERCG) amid concerns that the current approach is discriminatory.

Data obtained from the UK Ministry of Justice and shared with *The BMJ* suggests that UK prisoners at the end of life are more likely to be granted ERCG if they have cancer than other conditions.

Jim Burtonwood, a palliative care specialty doctor who led the research, explains that under current legislation, the UK justice secretary can legally grant ERCG where there is a risk of harm to the prisoner from ongoing imprisonment, potential benefit through release, low risk of recidivism and adequate arrangements for safe care in the community.

But crucially, death must be expected "very soon" and HM Prisons and Probation Service consider this to be within three months.

Using Freedom Of Information requests to the Ministry of Justice, Burtonwood and colleagues found that in five years between 2013 and 2017, only 48 applications for ERCG were successful, while in the same period there were 845 recorded deaths from natural causes in prison.

What's more, in 2017, all six prisoners who had successful ERCGs had some form of cancer. This was despite the fact that 39% of all expected deaths from [natural causes](#) in English and Welsh prisons at that time were due to non-cancer causes, such as [chronic lung disease](#) (COPD) and

dementia.

Burtonwood says the current ERCG legislation could be deemed to be discriminatory according to the 2010 Equality Act, and should be made more flexible.

"The rules as they stand favour those conditions like cancer with either clear prognoses or more predictable trajectories," he told *The BMJ*. "We saw that [prisoner](#) patients with COPD, dementia or [heart failure](#) were the ones that tended to be rejected, usually on the basis that their prognosis wasn't clear enough for people to make confident judgements about ERCG."

He acknowledges that decisions must be balanced against the risk of public harm, and notes that prison GPs may feel under pressure over making a definitive prognosis, because of the potential adverse publicity that could ensue if a patient lives longer than expected.

But he argues that for terminally ill prisoners, extending the ERCG requirement for a three month prognosis or recognising the uncertainty that comes with some of the non-cancer conditions "might help bring the UK into line with other European countries and allow for a more appropriate use of ERCG without adverse effects on public safety."

Current legislation regarding ERCG "appears to inadvertently treat patients differently according to their underlying diagnosis," he concludes. "It lies with clinical researchers to investigate the impact on patients, but with government and other policy makers to ensure parity of treatment through our laws."

**More information:** Early release rules for prisoners at end of life may be "discriminatory," say doctors, *The BMJ*, [DOI: 10.1136/bmj.l4140](https://doi.org/10.1136/bmj.l4140)

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