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Everywhere and Nowhere: Compassionate Release in the States

Executive Summary

“Compassionate release” is meant to shorten a prisoner’s sentence when circumstances such as imminent death or significant illness lessen the need for, or morality of, continued imprisonment. FAMMM became interested in compassionate release because we routinely heard heart-wrenching accounts from sick or dying prisoners and their loved ones trying to navigate complicated compassionate release programs. Prisoners do not understand how to ask for compassionate release or interpret eligibility criteria. They encounter walls of silence and endure lengthy delays. Most are turned down. Some die before a decision in their case is reached.

To help prisoners and their families become better advocates for compassionate release, we needed to examine the rules ourselves. We researched laws and regulations in every state, and we present our state-by-state findings in memos available at www.famm.org. Each memo covers all aspects of the individual state programs, from eligibility criteria through application, investigation, decision-making, release planning, and reporting requirements.

We were gratified to learn that 49 states and the District of Columbia provide some means for prisoners to secure compassionate release. But we were dismayed to discover that very few prisoners actually receive compassionate release.

This report summarizes our findings. It describes the barriers and the best practices we uncovered and illustrates them with selected examples drawn directly from our research on individual states. Above all, we found that every state could improve compassionate release. Accordingly, this report closes with a set of recommendations for policymakers interested in bringing their state programs in line with best practices.

RECOMMENDATIONS

Expand and Improve Compassionate Release Policies in All States

1. Pass or amend legislation guaranteeing compassionate release on the basis of serious medical conditions, terminal illness, and advanced age.
2. Enact, amend, or update agency rules so that they are consistent with compassionate release laws.
3. Replace uncertain, inconsistent, or confusing rules and policies with effective, clear policies.

Ensure That Eligibility Criteria Is Fair and Just

4. Guarantee that all eligible prisoners are considered for compassionate release, notwithstanding their crime, sentence, or amount of time left to serve.
5. Remove unduly strict, cruel, or otherwise unwarranted eligibility requirements.
6. Base medical, end-of-life, and geriatric criteria on evidence and best practices, with input from medical experts.

Establish Deadlines to Keep Applications Moving

7. Establish time frames within which document-gathering, assessment, and decision-making must occur that are realistic, provide sufficient time to develop informed decisions, and are sensitive to the need for expedited review in the case of terminal illness.

Publicize Compassionate Release Programs and Policies

8. Provide information about compassionate release options to each entering prisoner and ensure prison handbooks include a section that clearly explains eligibility and application.
9. Make sure prison law libraries have easy-to-find information and application forms.
10. Provide readily accessible information on relevant state agency websites.
11. Involve families in identifying eligible prisoners and providing support, such as in coordinating release planning.
12. Train corrections staff to understand eligibility criteria for compassionate release.
13. Teach staff how to identify eligible prisoners and make it their duty to do so.
14. Keep prisoners, family members, and advocates informed at each stage of the assessment and decision-making process.
15. Designate and train staff as family liaisons to coordinate with family members.

Provide Assistance With Post-Release Planning

16. Assign dedicated staff to assist ill and elderly prisoners with pre- and post-release planning, including applying for public assistance, veterans' benefits, housing and medical facility placements, Medicaid and/or Medicare, and other supports.
17. Allow attorneys to apply for compassionate release on behalf of prisoners.
18. Ensure the right to counsel for all compassionate release proceedings, including appeals and revocations.
19. Provide the right to appeal denials or the right to reapply following a denial.

Require Data Collection and Reporting

20. Require all agencies involved in compassionate release to provide annual data—including demographic information—on applications, approvals, denials, and revocations, including reasons for denials and revocations.
21. Establish measures of success and report on how well states meet these measures.

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