

Compassionate Release Report Card • October 2022

Arkansas

Overall Grade for Arkansas

Total Grade

33 /100

Letter Grade

F

Program Grades

	Total Grade	Letter Grade
Medical Parole	32/100	F
Early Release to Home Detention	36/100	F
Executive Clemency Due to a Life-Threatening Medical Condition	31/100	F

Find all compassionate release resources on FAMM's site →

famm.org



Medical Parole

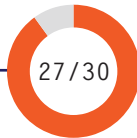
Total Grade

32 /100

Letter Grade

F

Eligibility Criteria



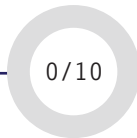
4/10 Clearly set out with understandable and measurable standards.

6/10 Generous or not unduly restrictive.

7/10 No categorical exclusions/everyone is eligible for consideration.

+ Extra credit: Terminal illness time-left-to-live provisions are reasonable and sufficiently long to permit the completion of the review and decision-making processes. **+10**

Procedures

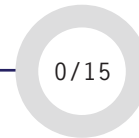


0/5 Documentation and assessment are straightforward, lacking multiple or redundant reviews and authorizations.

0/5 Time frames for completing review and/or decision-making exist and are designed to keep the process moving along.

x Extra credit: Expedited time frames exist for terminal cases. **0**

Engaging the Process

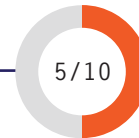


0/5 UTD* Clinical and other staff can identify potentially eligible individuals and initiate the process.

0/5 Incarcerated people, their loved ones, and advocates can initiate the process.

0/5 Corrections staff have an affirmative duty to identify incarcerated people eligible for compassionate release and take the steps necessary to begin the process.

Release Planning Support

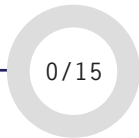


5/5 Agencies provide comprehensive release planning.

x Extra credit: Release planning includes helping the incarcerated person apply for benefits prior to release, including housing, Medicaid, Medicare, and/or veterans benefits. **0**

0/5 Release planning begins early in the process.

Agency Policy Design

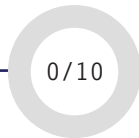


0/5 Agency rules exist for all stages of identification, initiation, assessment, and decision-making.

0/5 Agency rules are consistent with and/or complement the statute, are up to date, and internally consistent.

0/5 Rules provide clear guidance to reviewers and decision-makers about steps to take and standards to apply.

Data Collection and Public Reporting



0/5 Agencies are obliged to gather, compile, and report release data to legislature.

0/5 Reporting is made available to the public via annual reports or other means.

0/10

Right to Counsel and Appeals

0/5 UTD Program allows counsel to represent people before decision-maker (i.e., parole board, commissioner, or court).

✘ **Extra credit:** Denials are appealable. **0**

0/5 UTD Individuals have the right to reapply should conditions change.

✘ **Extra credit:** Revocations are not used to return people to prison because their condition improves or goes into remission or because the individual outlives the prognosis. **0**

* UTD stands for "Unable to Determine" and is graded zero. This is when there are no rules, guidelines, regulations, or other authority that FMM could find addressing the graded category. For example, if there are no published provisions for release planning or telling an agency how it is to evaluate an incarcerated person's eligibility, that results in a zero UTD grade.

The Numbers

FMM could not determine how many people received Medical Parole because Arkansas does not separately report those statistics and the Parole Board did not respond to FMM's request for information for 2019 and 2020.

High and Low Marks

HIGH MARKS

- While Arkansas' Medical Parole program received generally mediocre scores for **eligibility criteria**, due to a lack of both definition and generosity, the program earned **extra credit** because a person who is terminally ill is eligible when, in the opinion of two licensed physicians, the person is within two years of death. That criterion is designed to give the system sufficient time to evaluate and decide whether to grant end-of-life Medical Parole.
- FMM gave the Medical Parole program good grades for some aspects of **release planning**. While discharge planning does not begin early enough in the process, it is commendable that the Parole Board works with the Division of Correction to formulate a reentry plan that addresses medical or mental health needs. The plan must be in place 120 days prior to release.

LOW MARKS

- **Overall**, Arkansas' Medical Parole program **failed** in nearly every category.
- Very little public information exists about policies and procedures. FMM could not find information or rules about application, documentation, assessment, and decision-making procedures. As such, the program received zeros for **agency policy design** and **procedures**.
- The program does not have any application or referral rules explaining how potentially eligible individuals are identified. Division of Correction policy obliges the medical service to develop a process to identify and bring parole-eligible individuals to the Parole Board's attention, but there are no policies or procedures implementing that directive. The program thus failed the **engaging the process** grading category.
- FMM could not determine whether individuals have **access to counsel** for Parole Board hearings or the **right to appeal** denials or reapply should their medical condition deteriorate.

Early Release to Home Detention

Total Grade

36

 /100

Letter Grade

F

Eligibility Criteria


 31/30

6/10 Clearly set out with understandable and measurable standards.

6/10 Generous or not unduly restrictive.

9/10 No categorical exclusions/everyone is eligible for consideration.

+ Extra credit: Terminal illness time-left-to-live provisions are reasonable and sufficiently long to permit the completion of the review and decision-making processes. **+10**

Procedures


 0/10

0/5 Documentation and assessment are straightforward, lacking multiple or redundant reviews and authorizations.

0/5 Time frames for completing review and/or decision-making exist and are designed to keep the process moving along.

× Extra credit: Expedited time frames exist for terminal cases. **0**

Engaging the Process


 5/15

5/5 Clinical and other staff can identify potentially eligible individuals and initiate the process.

0/5 Incarcerated people, their loved ones, and advocates can initiate the process.

0/5 Corrections staff have an affirmative duty to identify incarcerated people eligible for compassionate release and take the steps necessary to begin the process.

Release Planning Support


 0/10

0/5 Agencies provide comprehensive release planning.

× Extra credit: Release planning includes helping the incarcerated person apply for benefits prior to release, including housing, Medicaid, Medicare, and/or veterans benefits. **0**

0/5 Release planning begins early in the process.

Agency Policy Design


 0/15

0/5 Agency rules exist for all stages of identification, initiation, assessment, and decision-making.

0/5 Agency rules are consistent with and/or complement the statute, are up to date, and internally consistent.

0/5 Rules provide clear guidance to reviewers and decision-makers about steps to take and standards to apply.

Data Collection and Public Reporting


 0/10

0/5 Agencies are obliged to gather, compile, and report release data to legislature.

0/5 Reporting is made available to the public via annual reports or other means.

0/10

Right to Counsel and Appeals

0/5 Program allows counsel to represent people before decision-maker (i.e., parole board, commissioner, or court).

✘ **Extra credit:** Denials are appealable. **0**

0/5 Individuals have the right to reapply should conditions change.

✘ **Extra credit:** Revocations are not used to return people to prison because their condition improves or goes into remission or because the individual outlives the prognosis. **0**

The Numbers

FAMM could not determine how many people received Early Release to Home Detention because Arkansas does not separately report releases for individuals due to incapacitating medical condition, terminal illness, or suitability for hospice care – the criteria for Early Release to Home Detention.

High and Low Marks

HIGH MARK

- **Eligibility criteria:** Despite rather mediocre marks in this grading category, Arkansas' Early Release to Home Detention program received extra credit because it makes people who are terminally ill eligible when they have an incurable condition that is likely to cause death within two years. That terminal illness provision is among the most generous in the country. The only people not eligible for the Early Release program are those serving sentences of life without parole.

LOW MARKS

- **Overall,** Arkansas's Early Release program **flunked** nearly every graded category. Scant information exists about the program. While Arkansas law directs the Division of Correction to establish policies and procedures, including program criteria and terms and conditions of release, FAMM located no policies, rules, guidance, or other than the most bare-bones information about how the program is administered.
- Other than the definition of terminal illness, other **eligibility criteria** are poorly defined. For example, people who are permanently incapacitated may be eligible, but the program only provides that the person require immediate and long-term care due to an irreversible incapacitating condition, without defining what "incapacitating condition" means.
- The Early Release program failed **engaging the process** because, as in every other area, no policy exists to guide Division medical personnel who are responsible to refer eligible individuals to the Parole Board for consideration.

Executive Clemency Due to a Life-Threatening Medical Condition

Total Grade

31

 /100

Letter Grade

F

Eligibility Criteria

14/30

2/10 Clearly set out with understandable and measurable standards.

2/10 Generous or not unduly restrictive.

10/10 No categorical exclusions/everyone is eligible for consideration.

× **Extra credit:** Terminal illness time-left-to-live provisions are reasonable and sufficiently long to permit the completion of the review and decision-making processes. **0**

Procedures

4/10

2/5 Documentation and assessment are straightforward, lacking multiple or redundant reviews and authorizations.

2/5 Time frames for completing review and/or decision-making exist and are designed to keep the process moving along.

× **Extra credit:** Expedited time frames exist for terminal cases. **0**

Engaging the Process

2/15

0/5 Clinical and other staff can identify potentially eligible individuals and initiate the process.

2/5 Incarcerated people, their loved ones, and advocates can initiate the process.

0/5 Corrections staff have an affirmative duty to identify incarcerated people eligible for compassionate release and take the steps necessary to begin the process.

Release Planning Support

0/10

0/5 Agencies provide comprehensive release planning.

× **Extra credit:** Release planning includes helping the incarcerated person apply for benefits prior to release, including housing, Medicaid, Medicare, and/or veterans benefits. **0**

0/5 Release planning begins early in the process.

Agency Policy Design

4/15

2/5 Agency rules exist for all stages of identification, initiation, assessment, and decision-making.

2/5 Agency rules are consistent with and/or complement the statute, are up to date, and internally consistent.

0/5 Rules provide clear guidance to reviewers and decision-makers about steps to take and standards to apply.

Data Collection and Public Reporting

0/10

0/5 Agencies are obliged to gather, compile, and report release data to legislature.

0/5 Reporting is made available to the public via annual reports or other means.

Right to Counsel and Appeals

7/10

5/5 Program allows counsel to represent people before decision-maker (i.e., parole board, commissioner, or court).

✘ **Extra credit:** Denials are appealable. **0**

2/5 Individuals have the right to reapply should conditions change.

✘ **Extra credit:** Revocations are not used to return people to prison because their condition improves or goes into remission or because the individual outlives the prognosis. **0**

The Numbers

While the Governor's office publishes monthly press releases on the number of individuals receiving Executive Clemency, it does not provide information on those whose sentences were commuted due to a life-threatening medical condition.

High and Low Marks

HIGH MARKS

- Arkansas' Executive Clemency Due to a Life-Threatening Medical Condition does not exclude anyone from **eligibility** no matter the nature of their conviction, length of sentence, or time left to serve.
- **Counsel can represent** individuals for the Parole Board hearing.

LOW MARKS

- **Overall**, Arkansas' Executive Clemency program **flunked** all but one graded category.
- **Eligibility criteria:** While incarcerated people with "life-threatening medical conditions" may apply for Executive Clemency, no definition of "life-threatening" exists in agency materials. That makes it very difficult to identify people whom the legislature intends the program to benefit.
- No agency policy or procedures exist whatsoever to direct the Division of Correction's role in the Executive Clemency program. It is possible the Division has no role because applications are referred to the Parole Board for investigation and processing. The program received partial marks for **agency policy design** and **procedures** because of the existence of rules governing the Parole Board's consideration of Executive Clemency applications.
- Despite the fact that the Executive Clemency program is open to people with medical conditions that threaten their lives, FAMM could not find any mention of **release planning support** for this very vulnerable population, who undoubtedly find it very difficult to connect on their own with outside agencies and organizations to arrange housing, medical care, and public benefits.
- Individuals whom the Governor denies Executive Clemency have a limited **right to reapply** if their physical or mental health has substantially deteriorated but not before 12 months have elapsed since the denied petition's filing date.