

Compassionate Release Report Card • October 2022

Arizona

Overall Grade for Arizona

Total Grade

20
/100

Letter Grade

F

Program Grades

	Total Grade	Letter Grade
Executive Clemency Due to Imminent Danger of Death	39/100	F
Compassionate Leave	0/100	F

Find all compassionate release resources on FAMM's site →

famm.org



Executive Clemency Due to Imminent Danger of Death

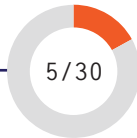
Total Grade

39 /100

Letter Grade

F

Eligibility Criteria



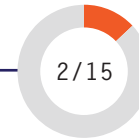
- 0/10 Clearly set out with understandable and measurable standards.
- 0/10 Generous or not unduly restrictive.
- 5/10 No categorical exclusions/everyone is eligible for consideration.
 - ✘ **Extra credit:** Terminal illness time-left-to-live provisions are reasonable and sufficiently long to permit the completion of the review and decision-making processes. 0

Procedures



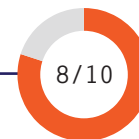
- 4/5 Documentation and assessment are straightforward, lacking multiple or redundant reviews and authorizations.
- 5/5 Time frames for completing review and/or decision-making exist and are designed to keep the process moving along.
 - + **Extra credit:** Expedited time frames exist for terminal cases. +5

Engaging the Process



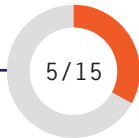
- 0/5 Clinical and other staff can identify potentially eligible individuals and initiate the process.
- 2/5 Incarcerated people, their loved ones, and advocates can initiate the process.
- 0/5 Corrections staff have an affirmative duty to identify incarcerated people eligible for compassionate release and take the steps necessary to begin the process.

Release Planning Support



- 5/5 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
- 3/5 Release planning begins early in the process.

Agency Policy Design



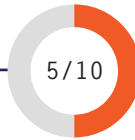
- 3/5 Agency rules exist for all stages of identification, initiation, assessment, and decision-making.
- 0/5 Agency rules are consistent with and/or complement the statute, are up to date, and internally consistent.
- 2/5 Rules provide clear guidance to reviewers and decision-makers about steps to take 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.

Right to Counsel and Appeals



5/5 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

The Arizona Clemency Board responded to FAMM's request for information with the following numbers:

2019 Of the 12 requests the Board received, it recommended five to the Governor. He granted two, and three died before he acted.

2020 The Board received and recommended nine requests to the Governor, who granted all nine.

High and Low Marks

HIGH MARKS

- **Procedures** governing Arizona's Executive Clemency Due to Imminent Danger of Death program are straightforward and lack the redundant reviews and time-consuming steps included in other programs FAMM evaluated. It also has commendably short deadlines for processing and reviewing applications and provides for priority scheduling of Clemency Board hearings. The program earned **extra credit** for expedited handling of terminal cases.
- **Release planning:** Once the Department of Corrections, Rehabilitation, and Reentry determines an individual is medically eligible for Executive Clemency, staff must work with the facility medical provider to put together a detailed discharge plan that includes residential housing and continuity of care planning. That takes the burden to develop those resources from the individual who is nearing the end of life and thus likely unable to do the work necessary to pull such a plan together.
- **Right to counsel:** Lawyers may represent incarcerated people before the Clemency Board, which recommends individuals to the Governor for release. Very few states provide that important feature, which FAMM considers essential to any compassionate release decision-making program.

LOW MARKS

- Executive Clemency failed the **eligibility criteria** grading category. Only people in “imminent danger of death” may apply for this form of compassionate release. The statute does not define the term, and the agencies’ definitions are exceptionally limited and ungenerous. Furthermore, the Clemency Board may but is not required to waive the usual rule that the individual serve a minimum amount of time before seeking clemency if the applicant is seeking release due to imminent danger of death.
- Only incarcerated people can **initiate the application process**, which is unduly restrictive, given that the Department requires that applicants be within three months of death. Filling out an application and securing documentation without assistance must be prohibitively challenging.
- **Agency policy** provides three different definitions of “imminence,” earning zero points for policy consistency. The Department says a person is in imminent danger of death if within three months of death. The Board will only consider individuals within four months of death, while the Pardon Application says an individual is considered when within six months of death. None of those definitions is in any way generous, much less consistent. Given that the Department is in charge of determining whether a person is eligible and it will not consider anyone until they are within three months of death, everyone who may meet the more generous Board criteria must wait.

Compassionate Leave

Total Grade

0

/100

Letter Grade

F

Eligibility Criteria

0/30

0/10 Clearly set out with understandable and measurable standards.

0/10 Generous or not unduly restrictive.

0/10 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

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

0/15

0/5 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

No information exists about how many people, if any, have received Compassionate Leave.

High and Low Marks

HIGH MARKS

- None

LOW MARKS

- **Overall**, Arizona's Compassionate Leave **flunked** because of the scant information about the program. While Arizona law provides for Compassionate Leave for the purpose of securing medical care not available in prison, there is no information whatsoever about assessment, procedures, decision-making, or post-decision matters. The program earned zeros in those areas because FAMM was unable to determine whether procedures and guidance exist.
- Also, Arizona provides the public two different and contradictory **eligibility criteria**. On the one hand, the Compassionate Leave law authorizes leave for the purpose of furnishing medical treatment not available in prison, but the Department of Corrections public information page explains that Compassionate Leave is reserved for people who have a "verified terminal illness."