

California

Overall Grade for California

Total Grade

63
/100

Letter Grade

D-

Program Grades

	Total Grade	Letter Grade
Recall of Sentence	72/100	C-
Medical Parole	75/100	C
Elderly Parole	42/100	F

Recall of Sentence*

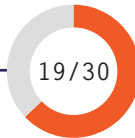
Total Grade

72 /100

Letter Grade

C-

Eligibility Criteria



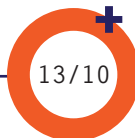
10/10 Clearly set out with understandable and measurable standards.

3/10 Generous or not unduly restrictive.

6/10 No categorical exclusions/everyone is eligible for consideration.

x 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

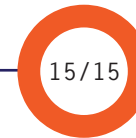


3/5 Documentation and assessment are straightforward, lacking multiple or redundant reviews and authorizations.

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

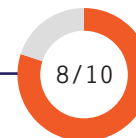


5/5 Clinical and other staff can identify potentially eligible individuals and initiate the process.

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

5/5 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

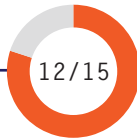


5/5 Agencies provide comprehensive release planning.

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**

3/5 Release planning begins early in the process.

Agency Policy Design

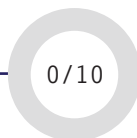


5/5 Agency rules exist for all stages of identification, initiation, assessment, and decision-making.

5/5 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.

10/10

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 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. **+5**

* On September 30, 2022, Governor Gavin Newsome signed AB 960 into law. The law, which will go into effect in January 1, 2023, will overhaul the Recall of Sentence program by expanding eligibility criteria. It will also streamline the program by removing the Secretary of the California Department of Corrections and Rehabilitation from the compassionate release decision-making process, and ensure all medically eligible incarcerated people have their day in court to determine whether they can safely be resentenced. FAMM will update the report card after the regulations are adopted.

** UTD stands for "Unable to Determine" and is graded zero. This is when there are no rules, guidelines, regulations, or other authority that FAMM 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.



Overall Extra Credit

+5 The California Recall of Sentence statute obliges the Secretary of the Department of Corrections and Rehabilitation to **issue a directive** to all medical and correctional staff that details guidelines and procedures, clearly states that all individuals with 12 months or less to live are eligible, and instructs staff to initiate the Recall of Sentence application on the individuals' behalf.

+10 Within 48 hours of identifying an incarcerated person as potentially eligible for Recall, the Warden must notify the individual and a designated family member, explain the process, and keep them apprised of developments throughout the recall process. FAMM knows of no other state program that provides that service and level of **transparency**.

+5 The public defender is authorized to represent individuals before the sentencing court, which makes the decision whether to grant Recall of Sentence. **Access to counsel** is all too rare in compassionate release programs, and access to the public defender for indigent defendants is a feature we urge other states to follow.



Overall Penalties

-15 While California's Recall of Sentence program has deadlines for the steps in the assessment process, FAMM suspects that agencies do not routinely honor those. Between 2015 and 2021, 95 of the 306 people who were being considered for Recall of Sentence died before the process could be completed.

-10 Even though the Recall of Sentence program has some good design features, very few people benefit from the program.

The Numbers

2019 Courts granted 17 people Recall of Sentence, four of whom died before they could be released.

2020 Courts granted 15 people Recall of Sentence.

High and Low Marks

HIGH MARKS

- **Engaging the Process:** In addition to permitting incarcerated people, their families, and others to apply for Recall of Sentence, the program obliges clinical staff to identify and begin the application and referral process for people who are terminally ill. Only a handful of states provide that feature, which FAMM thinks is essential to identifying and supporting the people the legislature intended for consideration.
- The program received **extra credit** for notifying individuals of their potential eligibility, ensuring the individual designates an outside person to be notified, and ensuring that both receive updates throughout the process. **California is the only jurisdiction that provides that support.**
- The program includes admirable **policy design** and **procedures**, such as short time frames for assessment and decision-making. It also appears to provide comprehensive **release planning support**, including ensuring incarcerated individuals have applied for federal entitlement programs.

LOW MARKS

- The Recall of Sentence program received a relatively low grade for **eligibility criteria** due to the fact that people, other than those who are terminally ill and within 12 months of death, must be permanently incapacitated and require 24-hour care for such conditions as coma, persistent vegetative state, brain death, etc. That standard is unduly restrictive in FAMM's view.
- While the program received overall high marks for **policy design** and **procedures**, we noticed that various officials in the decision-making chain have the ability to end the Recall of Sentence process by determining that they do not agree with the prognosis. There do not appear to be any publicly available rules or standards addressing how those officials arrive at that decision. Similarly, the Secretary of the Department of Corrections and Rehabilitation can decline to refer an individual who is medically and statutorily eligible to the sentencing court. The Secretary's decision is final and not, as far as FAMM can tell, appealable. No standards exist to guide the Secretary's decision.
- The program also received a low grade for **appeals**, given that the rules do not cover whether an individual can appeal a denial made within the Department (although there is an administrative remedy process) or, for that matter, a denial by the court.

Medical Parole

Total Grade

75 /100

Letter Grade

C

Eligibility Criteria

12/30

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

1/10 Generous or not unduly restrictive.

1/10 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

9/10

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. **0**

Engaging the Process

15/15

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

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

5/5 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

15/10 **+**

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. **+5**

5/5 Release planning begins early in the process.

Agency Policy Design

15/15

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

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

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

Data Collection and Public Reporting

5/10

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

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

Right to Counsel and Appeals

4/10

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**

4/5 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 Board does not make Early Medical Release data available to the public. The Board responded to FAMM's request for information by explaining that:

2019 The Board approved 18 requests for Medical Parole.

2020 The Board approved 73 requests for Medical Parole.

High and Low Marks

HIGH MARKS

- Incarcerated individuals and people on their behalf, including attorneys, may request Medical Parole consideration. In addition, primary care physicians must identify people in their care who are potentially eligible for Medical Parole and submit recommendations for their evaluation to the Chief Medical Officer. Those features earned California's Medical Parole program a top grade for **engaging the process**.
- The program earned top marks for **policy design** and **procedures**. Rules are clearly set out, with admirable deadlines designed to keep applicants moving along and clear guidance to decision-makers about their roles, the steps they are to take, and the standards or criteria they must apply.
- The program also earned high grades for **release planning support**. Once the Warden determines an individual should be recommended to the California Board of Parole Hearings, Health Care Services staff in the individual's prison work to identify a suitable placement. The program also received **extra credit** because once the Board grants Medical Parole, the Department of Corrections and Rehabilitation must ensure the paroled individual has applied for all federal entitlement programs. Very few state compassionate release programs explicitly provide for that level of discharge support.

LOW MARKS

- California received poor grades for **eligibility criteria**. The criteria are quite miserly; Medical Parole is only available to people who are unable to perform activities of daily living and who require 24-hour care. That is an extreme standard compared to those other states use and one that likely bars many people from consideration. Additionally, categorical exclusions ban many people from eligibility based on the type of sentence they are serving or their underlying crime of conviction.
- While people who are denied Medical Parole may **reapply**, they must wait six months to do so notwithstanding any intervening deterioration in their health.

Elderly Parole

Total Grade

42 /100

Letter Grade

F

Eligibility Criteria

22/30

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

8/10 Generous or not unduly restrictive.

4/10 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 UTD Documentation and assessment are straightforward, lacking multiple or redundant reviews and authorizations.

0/5 UTD 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 UTD 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 UTD Release planning begins early in the process.

Agency Policy Design

0/15

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

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

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

Data Collection and Public Reporting

5/10

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

5/5 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**



Overall Extra Credit

+15 Despite the near complete absence of information about guidance, policies, procedures, timelines, etc., California does appear to use the Elderly Parole program, as evidenced in the numbers of people released through the authority.

The Numbers

The Board does not make Early Medical Release data available to the public. The Board responded to FAMM's request for information by explaining that:

2019 The Board granted 268 Elderly Parole applications.

2020 The Board granted 317 Elderly Parole applications.

High and Low Marks

HIGH MARK

- **Eligibility criteria** for the Medical Parole program are clear, easy to apply, and relatively generous. The grade for this category suffered because of the many people who are categorically unable to qualify for consideration due to the nature of their sentence or crime of conviction.

LOW MARKS

- **Overall**, California provides scant information about its Elderly Parole program, beyond eligibility criteria and some limited information about California Board of Parole Hearings consideration. FAMM could not meaningfully score the program given how little public information exists about how documentation, assessment, and decision-making take place.
- It appears that there is no way to **initiate the process**. Instead, the Board can consider an individual for Elderly Parole when it chances upon the individual while scheduling that person for a parole suitability hearing date or considering a request for a hearing under some other state parole provision.
- No **agency policies** or **procedures** exist to govern documentation and assessment. The only standards that the Board appears to consider are whether the person's age, time served, and diminished physical condition (which is not one of the criteria for Elderly Parole) have reduced the individual's risk for future violence.
- FAMM could not find any reference to **release planning support** or **right to counsel** and **appeals** or **reconsiderations**.