

Delaware

Overall Grade for Delaware

Total Grade

19
/100

Letter Grade

F

Program Grades

	Total Grade	Letter Grade
Sentence Modification Due to Illness or Infirmary	20/100	F
Medical Parole	18/100	F

Sentence Modification Due to Illness or Infirmary

Total Grade

20 /100

Letter Grade

F

Eligibility Criteria

12/30

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

0/10 UTD* 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

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

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

0/5 UTD 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

3/15

1/5 Agency rules exist for all stages of identification, initiation, assessment, and decision-making.

1/5 Agency rules are consistent with and/or complement the statute, are up to date, and internally consistent.

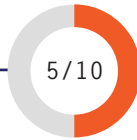
1/5 Rules provide clear guidance to reviewers and decision-makers about steps to take and standards to apply.

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

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**

* 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.

The Numbers

The courts are not required to report how many individuals have had their sentences modified due to a medical illness or infirmity, and there are no publicly available statistics.

High and Low Marks

HIGH MARKS

- **Eligibility criteria:** Every incarcerated person, except one serving a sentence of one year or less, is eligible for Sentence Modification Due to Illness or Infirmary.
- Delaware permits **counsel** to participate in the Board of Parole hearings used to arrive at a recommendation for the sentencing court.
- The usual waiting period of one year before **reapplication** following an adverse Board decision is waived for those individuals whose applications are based on illness or infirmity; they may reapply at any time.

LOW MARKS

- **Overall,** there is very little publicly available information about the Sentence Modification program, and that combined with what little FAMM could learn about the program led to its **failing grade** in every category. It was impossible to determine how the program operates. Board rules make no mention of the program, even though the Board plays the important role of deciding which applicants are referred to the sentencing court for a final decision. Although the statute gives the Board authority to promulgate regulations, it appears not to have done so.
- **Eligibility criteria:** An individual with a "serious" medical illness or infirmity may be eligible for a Sentence Modification Due to Illness or Infirmary. However, Delaware law does not define "serious" or provide examples of conditions that may qualify.

LOW MARKS (CONTINUED)

- The Department of Correction is responsible for **initiating the process** leading to Sentence Modification. It does so by filing an application “for good cause” on behalf of the incarcerated person with the Board and certifying that release would not constitute a substantial risk to the community or to the individual. FAMM could find no policy at all governing that Department’s role nor any mention about how anyone, whether incarcerated people or corrections staff, begins the process.
- Delaware’s Sentence Modification flunked **agency policy design** and **procedures** because, with the exception of a bit of information about how the Board holds hearings, FAMM could not locate any policy guiding the Department or anything having to do with how the Board assesses applicants whom the Department refers. Beyond generally applicable Board rules, there is little or no guidance about what the Department, the Board, or the courts consider when making decisions.
- FAMM could not determine whether **release planning support** exists.

Medical Parole

Total Grade

18 /100

Letter Grade

F

Eligibility Criteria

12/30

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

0/10 UTD* 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

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

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

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

Agency Policy Design

1/15

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

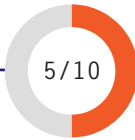
0/5 Rules provide clear guidance to reviewers and decision-makers about steps to take and standards to apply.

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.



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**

5/5 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**

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The Numbers

Delaware does not publish information about how many people receive Medical Parole. The Board of Parole denied FAMM's request for information on the number of individuals granted Medical Parole in 2019 and 2020.

High and Low Marks

HIGH MARKS

- **Eligibility criteria:** It appears anyone sentenced prior to 1999 is eligible for Medical Parole without respect to their offense of conviction or time served or left to serve.
- While an individual has no **right to appeal** a denial, the Board of Parole can consider an early hearing or rehearing date in light of medical treatment considerations and can review its decision if information of substantial significance, not available when the Board first heard the case, comes to light.

LOW MARKS

- **Overall**, there is very limited information about Medical Parole, and that fact, combined with what little we could learn about the program, led FAMM to **flunk** Delaware's Medical Parole in every grading category.
- Medical Parole flunked **eligibility criteria** because, while no one appears to be excluded from consideration, the only criterion is whether the individual has a condition that requires medical treatment that the Department of Correction cannot provide. That strikes us as both ungenerous and difficult to measure.
- **Engaging the process** entails the Department of Correction deciding that it "seems necessary" to recommend a person for medical parole. FAMM could not determine how the Department makes or carries out that decision, and we could find no mention of anyone, whether incarcerated or not, having the ability to bring a suitable applicant to the Department or Board's attention.
- The program failed **agency policy design** and **procedures** because FAMM could not locate any Department policy and only the briefest of mentions of the roles the Department and Board play. The Board is empowered to order Medical Parole if release is necessary for the individual's well-being, but FAMM could not locate any standards guiding the Board in that decision.
- While **release planning** must occur, because the state will only parole an individual when arrangements have been made for treatment in an "institution," no other rules or guidance exists discussing release planning.