

Compassionate Release Report Card • October 2022

# New Jersey

Overall Grade for New Jersey

Total Grade

**78**  
/100

Letter Grade

**C+**

Program Grades

**Compassionate Release**

Total Grade

**78/100**

Letter Grade

**C+**

Find all compassionate release resources on FAMM's site →

[famm.org](https://www.famm.org)



# Compassionate Release

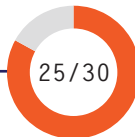
Total Grade

**78** /100

Letter Grade

**C+**

## Eligibility Criteria



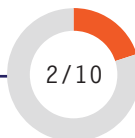
**10/10** Clearly set out with understandable and measurable standards.

**5/10** 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

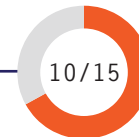


**0/5** Documentation and assessment are straightforward, lacking multiple or redundant reviews and authorizations.

**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



**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.

**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. **+5**

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

## Agency Policy Design\*

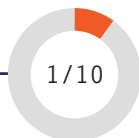


**5/5** Agency rules exist for all stages of identification, initiation, assessment, and decision-making.

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

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

## Data Collection and Public Reporting



**1/5** 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. **+5**

**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

**+5** Very early in the process, New Jersey affords counsel to people potentially eligible for Compassionate Release. As soon as an initial medical diagnosis determines the incarcerated person has a grave medical condition, the Department of Corrections must notify the individual's legal counsel or, if the person does not have an attorney, the public defender to initiate the Petition for Compassionate Release process.

\* New Jersey's Department of Corrections does not have regulations covering Compassionate Release but the statute includes very detailed provisions, making it easy to evaluate the policies and procedures. The courts, on the other hand, have regulations governing the judicial role.

\*\* 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 Compassionate Release program began in February 2021; as such, there are no numbers for 2019 and 2020.

## High and Low Marks

### HIGH MARK

- **Engaging the process:** A wide range of people, from the incarcerated person and the individual's supporters to correctional facility staff, administrators, or the facility's Superintendent, can begin the Compassionate Release assessment process by simply asking for a medical diagnosis.
- The rules governing Compassionate Release are clearly set out, are understandable, cover all the steps and requirements, and provide clear guidance to the Department and the court about steps to follow and standards to apply. New Jersey Compassionate Release earned top grades for **policy design**.
- **Right to counsel** for Compassionate Release is rarely provided by state programs, and providing public defenders to the indigent for the process is almost unheard of. New Jersey is one of the only states to ensure incarcerated people are represented throughout the process.

### LOW MARKS

- New Jersey's grade for Compassionate Release **eligibility criteria** was saved by the facts that it includes no exclusions and the criteria are set out clearly and are measurable. That said, those criteria are extremely stingy. To even be able to begin the three-stage process, an incarcerated person must be found to be either between six and 12 months of death or unable to perform activities of daily living and have been receiving 24-hour care for the previous three months. Those findings entitle the individual to a certificate of eligibility. After that, they may not be considered eligible unless they are no more than six months from death or permanently unable to perform activities of daily living.
- New Jersey flunks **procedures**. The program requires two medical evaluations, one after the other. One evaluation determines initial eligibility. If the individual meets that threshold, doctors conduct a second examination to determine final eligibility. Those must occur before the individual can even petition the court for Compassionate Release. In our view, requiring two separate medical examinations to assess an individual who may be within months of death before the individual can even seek release from the court is unnecessary and time-consuming and may imperil the individual's chance for release before death.