



Ohio

Overall Grade for Ohio

Total Grade

37
/100

Letter Grade

F

Program Grades

	Total Grade	Letter Grade
Judicial Release	50/100	F
Release as if on Parole	29/100	F
Medical Release	32/100	F

Judicial Release

Total Grade

50

 /100

Letter Grade

F

Eligibility Criteria

26/30

8/10 Clearly set out with understandable and measurable standards.

10/10 Generous or not unduly restrictive.

8/10 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

7/10

5/5 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

5/15

0/5 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

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

7/15

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

3/5 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

0/10

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.

5/10

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* 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**

* Applicants get only one opportunity to seek Judicial Release, except if the court denies Judicial Release without prejudice and without holding a hearing. In that situation alone, the individual may file a subsequent motion. If the court does not hold a hearing and denies the motion with prejudice, it may consider Judicial Release at a later date but the individual may not file a subsequent motion.

The Numbers

No public statistics exist for Judicial Release.

High and Low Marks

HIGH MARKS

- Ohio law bars people from seeking most forms of Judicial Release if they have committed any of a number of enumerated offenses or have not served a designated portion of their sentence. It makes an exception for people seeking Judicial Release based on medical criteria and allows all to apply except people serving a sentence of life or death. The **eligibility criteria**, while not always adequately defined, are relatively generous in scope. People who are terminally ill, for example, are eligible when within 12 months of death. People will be considered medically incapacitated if their condition is chronic, is irreversible, and prevents them from completing activities of daily living without significant assistance. The program would have earned a higher grade for eligibility criteria except for standards FAMM believes are difficult to evaluate. For those seeking release due to incapacitation, those criteria include the requirement that they be incapacitated to the extent that incarceration offers “no additional restrictions.” That seems both strict and difficult to measure objectively.
- While no agency rules appear to govern **procedures**, the statute lays out a relatively simple and not cumbersome set of steps for the courts and Department of Correction and Rehabilitation to follow.

LOW MARKS

- FAMM gave Judicial Release only half marks for **policy design** because we could not locate any agency policy governing the Department’s roles and responsibilities. That said, the statute is relatively straightforward and detailed.
- We found no mention of **release planning** whatsoever, and Judicial Release failed that category. To grant Judicial Release, a court must find that the individual’s release will not pose an undue risk to public safety. Lacking a comprehensive release plan likely depresses outcomes, because courts may not be confident the individual will have the support needed to be safely returned to the community.
- Individuals may not **reapply** following denial. With very few exceptions, the court will hold only one Judicial Release hearing for an incarcerated person. If, after holding a hearing, the court denies the motion for Judicial Release, it will not consider a subsequent motion for that person.
- No **data reporting** exists for Judicial Release, resulting in a grade of zero.

Release as if on Parole

Total Grade

29

 /100

Letter Grade

F

Eligibility Criteria

17/30

5/10 Clearly set out with understandable and measurable standards.

10/10 Generous or not unduly restrictive.

2/10 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

5/15

3/5 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.

2/5 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

2/10

2/5 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 UTD* Release planning begins early in the process.

Agency Policy Design

5/15

5/5 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 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

The Governor's office did not respond to FMM's request for information on how many individuals, if any, received Release as if on Parole in 2019 and 2020.

High and Low Marks

HIGH MARK

■ Ohio's Release as if on Parole **eligibility criteria**, while not always adequately defined, are relatively generous in scope. Incarcerated people who are terminally ill, for example, are eligible when within 12 months of death. People will be considered medically incapacitated if their condition is chronic, irreversible, and prevents them from completing activities of daily living without significant assistance. Ohio would have earned a higher grade for eligibility criteria except for standards FMM believes are difficult to evaluate. For those seeking release due to incapacitation, those criteria include the requirement that they be incapacitated to the extent that incarceration offers "no additional restrictions." That seems both strict and difficult to measure objectively. The grade also suffered because the program categorically excludes many individuals from eligibility due to the nature of their offense.

LOW MARKS

- Ohio's Release as if on Parole fails the **agency policy design** and **procedures** categories due to Department of Rehabilitation and Correction rules that do not line up with the authorizing statute. The rules are incoherent and so inconsistent that FMM imagines the program is impossible to carry out.
 - ▶ The statute and the Department rules implementing it frequently disagree to the point of contradiction. The two authorities describe different procedures for initiating the process and for documenting and assessing the individual's medical condition. Of most concern is the Department rule that requires a person to first seek Judicial Review before seeking Release as if on Parole.

LOW MARKS (CONTINUED)

- ▶ The documentation and assessment process is multilayered and burdened with numerous steps. First, the Department requires individuals, including people in “imminent danger of death,” to go through all the steps to seek Judicial Review before they may apply for Release as if on Parole. We believe that when the court denies individuals, the application for Release as if on Parole can proceed. The process follows one of two sets of steps, one that the statute describes and the other more ornate one that Department rules define, before an individual can be referred to the Governor.
- ▶ Most disturbing, as mentioned above, the Department rules state that a person is ineligible for Release as if on Parole if they have not first gone through the Judicial Review process and been denied. The statute says nothing of the sort. However, because an individual cannot be

referred for Release until the Department determines they meet the criteria, it is quite possible that Department officials in charge of the program force individuals to go through an unnecessary and lengthy petition for Judicial Review. That may be impossible, however, because people denied Judicial Review at any time in the past may be banned from Release as if on Parole. That is because a person can only, with very few exceptions, seek Judicial Review once. If denied, they may not apply again. So, anyone who in the past sought Judicial Review for any reason, including but not limited to medical reasons, may not reapply for Judicial Review. Because the Release as if on Parole process cannot begin until the person seeks and is denied Judicial Review, it appears there is no avenue for the release of people who are medically eligible but unable to petition the court.

Medical Release

Total Grade

32

 /100

Letter Grade

F

Eligibility Criteria

17/30

5/10 Clearly set out with understandable and measurable standards.

10/10 Generous or not unduly restrictive.

2/10 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

2/10

2/5 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

10/15

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.

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

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.

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**

* 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 Board is not required to report on how many Medical Releases it grants and denies, and there is no publicly available information on how many people are granted Medical Release annually. The Board did not respond to FAMM's request for information on how many individuals received Medical Parole in 2019 and 2020.

High and Low Marks

HIGH MARKS

- The **eligibility criteria**, while not always adequately defined, are relatively generous in scope. Incarcerated people who are terminally ill, for example, are eligible when within 12 months of death. People will be considered medically incapacitated if their condition is chronic, is irreversible, and prevents them from completing activities of daily living without significant assistance. Ohio would have earned a higher grade for eligibility criteria except for standards FAMM believes are difficult to evaluate. For those seeking release due to incapacitation, those criteria include the requirement that they be incapacitated to the extent that incarceration offers "no additional restrictions." That seems both strict and difficult to measure objectively. The grade for eligibility also suffered because the program categorically excludes many individuals from eligibility due to the nature of their offense.
- Ohio's Medical Release program received strong marks for **engaging the process**. While incarcerated people and their loved ones do not have any way to apply for Medical Release, the facility's Health Care Administrator must begin the Medical Release process upon becoming aware of an individual who is in imminent danger of death, terminally ill, or medically incapacitated. Following a medical certification, the case is referred to Department of Rehabilitation and Correction Legal Services office, which then forwards information about those who are not statutorily barred up the chain and eventually to the Ohio Parole Board Chair. Unfortunately, very few states oblige health care providers to take an active role in identifying people who meet compassionate release criteria and beginning the release application process for them.

LOW MARKS

- There is scant **agency policy** governing the Department's duties or those of the Ohio Parole Board. We could find little in the way of standards, steps to follow, or assigned duties and nothing to indicate that the state imposes any deadlines on staff and officials evaluating individual cases and making the Medical Parole decisions. Only the barest information exists about procedures to follow, and the Parole Board Handbook does not mention Medical Release.
- Ohio's Medical Release program also failed **release planning support** because there is no mention that the Department has any responsibility to support individuals. FAMM was unable to determine whether people near the end of life or incapacitated get any help in this area. Those incarcerated people are already medically compromised. Given that they are also likely advanced in years (to qualify they must have been sentenced before July 1996), providing them help with release planning should be a given.