

Compassionate Release Report Card • October 2022

# Wisconsin

Overall Grade for Wisconsin

Total Grade

**52** /100

Letter Grade

**F**

Program Grades

	Total Grade	Letter Grade
<b>Sentence Modification Due to Extraordinary Health Condition or Age</b>	<b>78/100</b>	<b>C+</b>
<b>Parole Due to Extraordinary Circumstances</b>	<b>26/100</b>	<b>F</b>

Find all compassionate release resources on FAMM's site →

famm.org



# Sentence Modification Due to Extraordinary Health Condition or Age

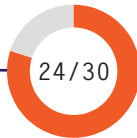
Total Grade

78 /100

Letter Grade

C+

## Eligibility Criteria



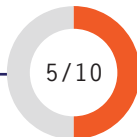
**10/10** Clearly set out with understandable and measurable standards.

**10/10** 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

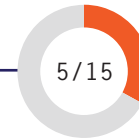


**5/5** Documentation and assessment are straightforward, lacking multiple or redundant reviews and authorizations.

**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



**0/5** 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

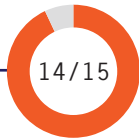


**5/5** Agencies provide comprehensive release planning.

**+ Extra credit:** Release planning includes helping the incarcerated person apply for benefits prior to release, including housing, Medicaid, Medicare, and/or veterans benefits. **+5**

**5/5** 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.

**4/5** 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



**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.

15/10

## 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\*** 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**

\* Individuals must wait one year to reapply if denied at the agency or by the court.

## The Numbers

In response to FAMM's request for information, the Department of Corrections reported the following:

**2019** Of the 29 applications received, the Department approved nine and denied 15.

**2020** Of the 187 applications received, the Department approved 19 and denied 119.

## High and Low Marks

### HIGH MARKS

- Wisconsin's Sentence Modification **eligibility criteria** are a model of clarity and breadth. The program is open to people in prison who have an "extraordinary health condition" and those 60 or older who have served a specified portion of their sentence. It provides very clear descriptions of what constitutes extraordinary health conditions and includes easy-to-understand examples of qualifying conditions. The criteria for age plus time served are similarly straightforward and easy to apply. The criteria are, for the most part, generous – for example, not requiring complete debilitation. Admirably, the criteria include significant cognitive problems with a description of the limitations individuals may suffer.
- The Sentence Modification program earns top marks for **policy design**. As described above, criteria are clear. There are clearly laid-out steps for actors at each stage of the process, and the rules provide reviewers and decision-makers straightforward guidance on steps to take and standards to apply.
- **Release planning** is the jewel in the crown of Wisconsin's Sentence Modification program. It starts early, is comprehensive, and includes assistance with applying for benefits (earning it **extra credit**) and finding housing and funding.
- FAMM was also impressed by the fact that the program allows counsel to be involved at the agency stage and permits **appellate review** of agency and judicial denials. The program earned **extra credit** because it does not use an individual's improved medical condition as grounds for revocation.

**LOW MARKS**

- The otherwise well-designed **eligibility criteria** do not receive perfect marks because people serving Felony A and those serving Felony B sentences are prohibited from consideration. The long list of those felonies includes crimes of violence, sex offenses, and child abuse, among others. That categorical exclusion prevents the court, which is the ultimate decision-maker, from considering whether the incarcerated person, even one nearing the end of life, can prove “by the greater weight of the evidence” that the release would serve the public interest.
- While the program is marked by thoughtful rulemaking, the **procedures** do not include defined time frames within which to complete the many tasks and steps leading to a referral to the sentencing court.
- Wisconsin does not require **data collection and public reporting** about applications and final decisions.

# Parole Due to Extraordinary Circumstances

Total Grade

26 /100

Letter Grade

F

## Eligibility Criteria

13/30

**3/10** 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

10/15

**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.

**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.

3/10

## Right to Counsel and Appeals

**3/5** 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 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

In response to FAMM's request for information, the Department of Corrections reported:

**2019** Three people received Parole Due to Extraordinary Circumstances.

**2020** The Parole Commission approved no requests.

## High and Low Marks

### HIGH MARKS

- While the program barely explains the Parole Due to Extraordinary Circumstances **eligibility criteria**, the program does not exclude anyone based on the crime of conviction, sentence length, or time left to serve.
- A broad range of people can **engage the process** by initiating a request. That includes incarcerated individuals and their guardians as well as prison staff and officials and the Chair of the Parole Commission.
- The program earned partial marks for **right to counsel**. Parole Commission rules permit people whose request rests on "extraordinary medical conditions" to have counsel present when appearing before a parole commissioner for a "release consideration" interview.

### LOW MARKS

- **Overall:** Parole Due to Extraordinary Circumstances is the only avenue to compassionate release for people who were sentenced prior to Dec. 31, 1999. In stark contrast to its counterpart for those sentenced after that date, scant information, policy, or regulations exist to govern the program. Press reports suggest, however, that Parole Due to Extraordinary Circumstances is still occasionally used.
- While Wisconsin authorizes parole for people who are older or have a medical condition, **eligibility criteria** provide little definition for those conditions. For example, a person of advanced age is eligible, but the program does not explain what constitutes advanced age. Similarly, a person with an "infirmity" or disability qualifies, but no further explanation exists to help reviewers and decision-makers understand what those terms cover.
- The program flunked **agency policy design, procedures** and **release planning support**. No publicly available policy exists to, among other things, provide guidance to actors in the system, define how assessments take place, or address prerelease planning. The near-complete absence of guidance may help explain why so few people benefit from the program.