

Kansas provides compassionate release for eligible incarcerated individuals in two ways: (1) **Functional Incapacitation Release**, for those with debilitating medical conditions,<sup>1</sup> and (2) **Terminal Medical Release**, for those with terminal medical conditions.<sup>2</sup>

## **FUNCTIONAL INCAPACITATION RELEASE**

### **I. ELIGIBILITY**

**Medical Condition** – An incarcerated individual may be eligible for a Functional Incapacitation Release when an injury, disease, or illness (including dementia) permanently causes physical or mental incapacitation to the extent the person does not have the capacity to cause physical harm.<sup>3</sup>

**Exclusions** – An incarcerated individual is not eligible for Functional Incapacitation Release if serving a (1) death sentence, (2) life sentence without the possibility of parole, or (3) sentence for an “off-grid” offense.<sup>4</sup>

### **II. APPLICATION/REFERRAL**

**Application** – Any of the following people can submit a written request/application to the incarcerated person’s Unit Team to initiate the Functional Incapacitation Release process:<sup>5</sup> (1) the incarcerated individual, (2) a family member, (3) any Department of Corrections (Department) staff member or contractor, or (4) any Kansas Prisoner Review Board staff member.<sup>6</sup>

**Informal Review of Application** – There are multiple steps and “consultations” included in all initial reviews of Functional Incapacitation Release applications. It is not clear from Department policy precisely what the consultations involve.

- A Unit Team Counselor reviews the application, collects all medical information needed, and discusses the case with the Unit Team Manager.<sup>7</sup> The Unit Team Manager then consults with the Classification Administrator.<sup>8</sup>
- The Classification Administrator consults with the appropriate Warden (or Warden’s designee).<sup>9</sup> The Warden then consults with the Deputy Secretary for Facilities Management.<sup>10</sup>
- The Deputy Secretary reviews all the facts and documentation and then consults with the Secretary of Corrections and the Chair of the Prisoner Review Board.<sup>11</sup>

Once the informal review is complete, the incarcerated person’s institution is notified about whether to begin formal processing of the application.<sup>12</sup> If the Deputy Secretary

decides not to move the application forward, that is noted in the person's file.<sup>13</sup> If the Deputy Secretary decides to process the application, the more formal assessment steps take place, as described below.<sup>14</sup>

### **III. DOCUMENTATION AND ASSESSMENT**

**Documentation** – The Department is responsible for gathering the documentation the Prisoner Review Board needs to make its release decision. That includes a comprehensive description of the individual's condition and prognosis, prepared by a physician and, if appropriate, a mental health professional.<sup>15</sup> In addition, the Department must collect information concerning all of the following factors:<sup>16</sup>

- The individual's age, personal history, and criminal history;
- Length of sentence and time served;
- Nature and circumstances of the current offense;
- Risk or threat to the community if released; and
- Whether there is an appropriate release plan.

**Medical Information Form: Health Authority and/or Mental Health Director** – The Department's Health Authority and/or Mental Health Director completes the *Medical Information for Application for Release of an Inmate Based on Functional Incapacitation/Imminent Death* form.<sup>17</sup> Department policy says "lengthy" medical records are not required but that a thorough description of the individual's medical condition and how that condition renders the person incapable of causing physical harm should be included.<sup>18</sup>

**Application for Release Form: Unit Team** – The individual's Unit Team Counselor prepares the *Application for Release Based on Functional Incapacitation/Imminent Death*,<sup>19</sup> which (1) may include gathering additional information from the prosecuting attorney<sup>20</sup> and (2) must include contacting the Director of Victim Services, who reviews any relevant issues and makes any needed contact with the victim or survivor.<sup>21</sup>

- The Unit Team Counselor also consults with the Institutional Parole Officer (IPO) about a release plan.<sup>22</sup> The release plan must provide details about where the individual will live, medical services, and available funding.<sup>23</sup> The IPO forwards the proposed residence plan to the Parole Director (of the region to which the person will be released) to obtain feedback and recommendations.<sup>24</sup>

**Initial Decision: Warden** – The application then goes to the facility’s Classification Administrator, who submits it to the Warden. The Warden decides whether to initially approve or disapprove the application.<sup>25</sup>

- If the Warden **disapproves** the application, it is returned to the Unit Team counselor.<sup>26</sup>
- If the Warden **approves** the application, it is forwarded with the supporting documentation to the Office of the Deputy Secretary for Facilities Management (Deputy Secretary).<sup>27</sup>

**Approval Decision: Deputy Secretary** – The Deputy Secretary coordinates the application processing, which includes distributing copies to appropriate Department personnel, including the Director of Release Planning, for review and consideration. Based on a review of the available information, the Deputy Secretary makes a decision regarding the application.<sup>28</sup>

- If the Deputy Secretary **disapproves** the application, it is returned to the Warden who notifies the individual or the person who applied on the incarcerated individual’s behalf.<sup>29</sup>
- If the Deputy Secretary **approves** the application, it is forwarded to the Secretary of Corrections, with a recommendation that the Secretary apply to the Prisoner Review Board for the individual’s release based on functional incapacitation.<sup>30</sup>

**Approval Decision: Secretary of Corrections** – If the Secretary of Corrections agrees with the recommendation and wants to continue with the application process, notices regarding the individual’s application are sent to the prosecuting attorney, sentencing judge, and victim.<sup>31</sup> Based on the documentation and any comments received from the prosecuting attorney, sentencing judge, and victim, the Secretary approves or disapproves the application.<sup>32</sup>

- If the Secretary **disapproves** the application, it is returned to the Warden with a statement on the reasons for the disapproval.<sup>33</sup>
- If the Secretary **approves** the application, it is forwarded to the Prisoner Review Board for consideration.<sup>34</sup>

Note that if an individual’s application for Functional Incapacitation Release is disapproved at any point during this process, any future applications must specifically address what has changed since the disapproval that would warrant new consideration.<sup>35</sup>

## IV. DECISION-MAKING PROCESS

**Decision-Maker** – The Kansas Prisoner Review Board makes all Functional Incapacitation Release decisions.<sup>36</sup>

**Notice** – The Board must provide written notification of the individual’s application for Functional Incapacitation Release to (1) the prosecuting attorney and judge of the court where the individual was convicted<sup>37</sup> and (2) the victim (or the victim’s family).<sup>38</sup>

**Hearing** – At the discretion of the Board member reviewing the incarcerated person’s application for Functional Incapacitation Release and after considering all available information, a final decision on the application can be made **with or without** a formal hearing.<sup>39</sup>

- If the Board schedules a hearing, it may ask for additional information or evidence from the medical and mental health providers who prepared reports and anyone else who has relevant information.<sup>40</sup>

**Factors** – The Prisoner Review Board will consider all of the following factors and related documentation in making its decision:

- Documentation prepared by a medical doctor and, as needed, a mental health professional, which attests to the person’s condition, describes the functional incapacity, and includes a comprehensive description of the condition and prognosis.<sup>41</sup> Note that all medical and treatment records concerning the incarcerated individual must be available for the Board to review.<sup>42</sup> As noted above, the Board may also request additional information or evidence it deems necessary from the individual’s medical or mental health practitioners and, if necessary, obtain a second opinion.<sup>43</sup> The documentation includes:
  - The individual’s medical condition and health care needs.<sup>44</sup> Note that the Board may consider an individual’s need for long-term care but that by itself is not sufficient to warrant approval of Functional Incapacitation Release.<sup>45</sup>
  - The incarcerated person’s release plan.<sup>46</sup>
  - Any comments received from the prosecuting attorney, sentencing judge, crime victim, or member of the victim’s family.<sup>47</sup>
  - The individual’s age, personal history, criminal history, length of sentence and time served, and nature and circumstances of the current offense.<sup>48</sup>

- The individual’s custody classification.<sup>49</sup>
- The individual’s risk of violence,<sup>50</sup> capacity to cause physical harm,<sup>51</sup> and risk of threat to the community if released.<sup>52</sup>

**Decision** – The Prisoner Review Board may order release if it finds that the documentation supports a finding that the individual is functionally incapacitated and does not represent a risk to public safety.<sup>53</sup>

**Conditions and Pre-Release Planning** – The individual’s Functional Incapacitation Release is subject to the terms of an approved release plan and any other terms or conditions the Board decides are necessary.<sup>54</sup>

## **V. POST-DECISION**

**Effect of Functional Incapacitation Release on Parole or Other Release Eligibility** – Nothing in the Functional Incapacitation Release rules limits or precludes submission of an application for pardon or commutation of sentence.<sup>55</sup>

**Denials and Appeal Rights** – The decisions made in the assessment process leading up to the Prisoner Review Board’s decision are **not** subject to appeals “of any kind.”<sup>56</sup> The Board’s decision on the individual’s application, or on any revocation of release, is also final and not subject to review by any administrative agency or court.<sup>57</sup>

**Supervision** – The Department’s Community and Field Services Division supervises individuals granted Functional Incapacitation Release.<sup>58</sup>

**Revocation/Termination** – Individuals remain on supervision until their maximum sentence expires or the Board discharges them or revokes the Functional Incapacitation Release.<sup>59</sup>

- The Board can revoke Functional Incapacitation Release if (1) the functional incapacity “significantly” diminishes; (2) the individual does not comply with any condition of release; or (3) the Board decides the individual presents a threat or risk to public safety.<sup>60</sup>

## **VI. REPORTING/STATISTICS**

According to the Department’s annual reports, the Prisoner Review Board reviewed just one request for Functional Incapacitation Release in 2020 and no requests in 2019.<sup>61</sup> The 2020 report states only that the Board reviewed the request, not whether it granted the request.

# TERMINAL MEDICAL RELEASE

Incarcerated individuals with terminal medical conditions may be considered for Terminal Medical Release.<sup>62</sup>

- Note that according to the statute, the Terminal Medical Release process is supposed to be quicker than that for Functional Incapacitation Release. However, the only significant differences between the two appear to be that the Prisoner Review Board Chair can approve a request – rather than the decision requiring the full Board’s action<sup>63</sup> – and the Department of Corrections (Department) provides notice **after** the individual’s release is granted rather than at the time of application.<sup>64</sup>

## I. ELIGIBILITY

**Medical Condition** – To be eligible for Terminal Medical Release, an incarcerated individual must have a terminal condition where death is imminent, meaning it is likely to cause death within 30 days, as determined by a doctor licensed to practice medicine in Kansas.<sup>65</sup>

**Exclusions** – Individuals who are serving sentences for “off-grid” offenses are not eligible for Terminal Medical Release.<sup>66</sup>

## II. APPLICATION/REFERRAL

**Application** – Any of the following can submit a written request/application to the incarcerated person’s Unit Team to initiate the Terminal Medical Release process:<sup>67</sup> (1) the incarcerated individual, (2) a family member, (3) any Department staff member or contractor, or (4) any Prisoner Review Board staff member.<sup>68</sup>

**Informal Review of Application** – As with Functional Incapacitation Release applications, there are multiple steps and “consultations” included in all initial reviews of applications for Terminal Medical Release. It is not clear from Department policy as to precisely what the consultations involve.

- A Unit Team Counselor reviews the application, collects all medical information needed, and discusses the case with the Unit Team manager.<sup>69</sup> The Unit Team Manager then consults with the classification administrator.<sup>70</sup>
- The Classification Administrator consults with the appropriate Warden (or designee).<sup>71</sup> The Warden then consults with the Deputy Secretary for Facilities Management (Deputy Secretary).<sup>72</sup>

- The Deputy Secretary reviews all the facts and documentation and then consults with the Secretary of Corrections and the Chair of the Kansas Prisoner Review Board.<sup>73</sup>

Once the informal review is complete, the individual's institution is notified about starting the formal processing of the application.<sup>74</sup> If the Deputy Secretary decides not to move the application forward, that is noted in the person's file.<sup>75</sup> If the Deputy Secretary decides to process the application, the more formal assessment steps take place, as described below.<sup>76</sup>

### III. DOCUMENTATION AND ASSESSMENT

**Medical Information Form: Health Authority** – The Department's Health Authority completes and signs the *Medical Information for Application for Release of an Inmate Based on Functional Incapacitation/Imminent Death* form,<sup>77</sup> including a thorough description of the incarcerated individual's medical condition and a statement as to whether the condition renders the person incapable of causing physical harm.<sup>78</sup> Note that Kansas law states that only a doctor licensed to practice medicine in Kansas can determine that the individual's condition is likely to cause death within 30 days.<sup>79</sup>

**Application for Release Form: Unit Team** – The Unit Team Counselor for the individual prepares the *Application for Release Based on Functional Incapacitation/Imminent Death*, which may include gathering information from the prosecuting attorney.<sup>80</sup>

- Note that unlike preparation for Functional Incapacitation Release requests, the Unit Team Manager does not contact the Director of Victim Services regarding applications for Terminal Medical Release.<sup>81</sup>
- The Unit Team Counselor also consults with the Institutional Parole Officer (IPO) about a release plan.<sup>82</sup> The IPO forwards the proposed residence plan to the Parole Director (of the region to which the person will be released) for feedback and recommendations.<sup>83</sup>

**Initial Decision: Warden** – The application then goes to the facility's Classification Administrator, who submits it to the Warden. The Warden decides whether to "initially approve or disapprove" the application.<sup>84</sup>

- If the Warden **disapproves** the application, it is returned to the Unit Team counselor.<sup>85</sup> It is up to the Warden how to advise the person initiating the application regarding the outcome.<sup>86</sup>
- If the Warden **approves** the application, it is forwarded with the supporting documentation to the Office of the Deputy Secretary for Facilities Management.<sup>87</sup>

**Approval Decision: Deputy Secretary** – The Deputy Secretary coordinates processing of the individual’s application, which includes distribution of copies of the application to appropriate Corrections personnel, including the Director of Release Planning, for review and consideration. Based on a review of the available information, the Deputy Secretary makes a decision regarding the application.<sup>88</sup>

- When the Deputy Secretary **disapproves** an application, it is returned to the Warden, who notifies the incarcerated individual or person who applied on the individual’s behalf.<sup>89</sup>
- If the Deputy Secretary **approves** the application, it is forwarded to the Secretary of Corrections.<sup>90</sup>

**Approval Decision: Secretary of Corrections** – Based on all of the information, the Secretary of Corrections approves or disapproves the application:

- If the Secretary **disapproves** the application, it is returned to the Warden with the reasons for the disapproval.<sup>91</sup>
- If the Secretary **approves** the application, it is forwarded directly to the Chair of the Prisoner Review Board.<sup>92</sup>

#### **IV. DECISION-MAKING PROCESS**

**Decision-Maker** – The Chair of the Kansas Prisoner Review Board is responsible for approving Terminal Medical Release applications and granting release.<sup>93</sup>

**Notice** – Unlike the notice required for Functional Incapacitation Release requests, the Board does not have to give written notice to anyone until **after** it grants a Terminal Medical Release. At that time, the Board will notify the following people of the incarcerated individual’s release: the prosecuting attorney, sentencing judge of the court in which the person was convicted, and the victim of the person’s crime or the victim’s family.<sup>94</sup>

**Hearing** – Kansas law does not require the Prisoner Review Board to hold a hearing prior to granting a Terminal Medical Release request.<sup>95</sup>

**Decision** – To grant release, the Chair must find that the individual has a terminal medical condition likely to cause death within 30 days, as determined by a doctor licensed to practice medicine in Kansas, and does not represent a future risk to public safety.<sup>96</sup>

- In addition to the individual’s medical condition, the Chair must consider the following factors: (1) the person’s age and personal history, (2) criminal history, (3) length of sentence and time served, (4) nature and circumstances

of the current offense, (5) the risk to the community if released, (6) whether there is an appropriate release plan, and (7) any other factors the Chair decides are relevant.<sup>97</sup>

**Conditions and Pre-Release Planning** – The Chair must establish any conditions considered appropriate for the individual’s release.<sup>98</sup>

## **V. POST-DECISION**

**Effect of Terminal Medical Release on Other Release Eligibility** – Nothing in the Terminal Medical Release rules limits or precludes submission of an application for pardon or commutation of sentence.<sup>99</sup>

**Denials and Appeal Rights** – The Board Chair’s decision on the application is final and not subject to review by any administrative agency or court.<sup>100</sup>

**Supervision** – Formerly incarcerated individuals remain on supervision until the Prisoner Review Board revokes or discharges the release or the individual’s maximum sentence expires.<sup>101</sup>

**Revocation/Termination** – The Prisoner Review Board can revoke the release if (1) the individual’s illness or condition significantly improves, (2) if the person does not die within 30 days of release, (3) if there is a failure to comply with any condition of release, or (4) if the Board concludes for any reason that the individual presents a threat or risk to public safety.<sup>102</sup>

## **VI. REPORTING/STATISTICS**

Kansas law does not require that the Department or Prisoner Review Board report on how many individuals are granted Terminal Medical Release, and there is no mention in the Department’s 2019 and 2020 annual reports of the Board granting any such requests.

- Neither the Department nor the Prisoner Review Board responded to FAMM’s request for information on the number of individuals granted Terminal Medical Release.
- A news article published in February 2020 reported that Kansas has granted only one Terminal Medical Release since 2013.<sup>103</sup>

## **KANSAS COMPASSIONATE RELEASE**

### **PRIMARY LEGAL SOURCES**

## **FUNCTIONAL INCAPACITATION RELEASE**

### **Statute**

Kansas Statutes § 22-3728 (2020), available through the Kansas Office of Revisor of Statutes, [https://www.ksrevisor.org/statutes/chapters/ch22/022\\_037\\_0028.html](https://www.ksrevisor.org/statutes/chapters/ch22/022_037_0028.html).

### **Regulations**

Kansas Administrative Regulations §§ 45-700-1 and 45-700-2 (2020), available through the Kansas Secretary of State, [https://sos.ks.gov/publications/pubs\\_kar\\_Regs.aspx?KAR=45-700](https://sos.ks.gov/publications/pubs_kar_Regs.aspx?KAR=45-700).

### **Agency Policy**

Kansas Department of Corrections, Internal Management Policies and Procedures (DOC IMPP) 11-110, Release of Functionally Incapacitated Inmates or Release Pending Imminent Death (2011), <https://www.doc.ks.gov/kdoc-policies/AdultIMPP/chapter-11/11110.pdf>.

## **TERMINAL MEDICAL RELEASE**

### **Statute**

Kansas Statutes § 22-3729 (2020), available through the Kansas Office of Revisor of Statutes, [https://www.ksrevisor.org/statutes/chapters/ch22/022\\_037\\_0029.html](https://www.ksrevisor.org/statutes/chapters/ch22/022_037_0029.html).

### **Agency Policy**

Kansas Department of Corrections, Internal Management Policies and Procedures (DOC IMPP) 11-110, Release of Functionally Incapacitated Inmates or Release Pending Imminent Death (2011), <https://www.doc.ks.gov/kdoc-policies/AdultIMPP/chapter-11/11110.pdf>.

## NOTES

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\* *Id.* means see prior note.

<sup>1</sup> Kan. Stat. Ann. § 22-3728; Kan. Admin. Regs. §§ 45-700-1 and 45-700-2; Kansas Department of Corrections, Internal Management Policies and Procedures (DOC IMPP) 11-110, Application for Release of Functionally Incapacitated Inmates or Release Pending Imminent Death.

<sup>2</sup> Kan. Stat. Ann. § 22-3729; DOC IMPP 11-110.

<sup>3</sup> Kan. Admin. Regs. § 45-700-1 (b); DOC IMPP 11-110, Definitions.

<sup>4</sup> Kan. Stat. Ann. §§ 22-3728 (d) and (e); DOC IMPP 11-110, Policy. Note that “off-grid” felonies in Kansas are the most serious crimes and include capital murder, murder in the first degree, and treason. See Kansas Legislative Research Department, Kansas Legislator Briefing Book 2020, § H-8, [http://www.kslegresearch.org/KLRD-web/Publications/BriefingBook/2020\\_Briefing\\_Book.pdf](http://www.kslegresearch.org/KLRD-web/Publications/BriefingBook/2020_Briefing_Book.pdf).

<sup>5</sup> DOC IMPP 11-110 (I) (B).

<sup>6</sup> *Id.* at (I) (A). Note that the Prisoner Review Board used to be called the Parole Board, and the Department rules, which have not been updated since 2011, still use that terminology.

<sup>7</sup> *Id.* at (I) (C).

<sup>8</sup> *Id.* at (II) (A).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at (II) (B).

<sup>11</sup> *Id.* at (II) (C).

<sup>12</sup> *Id.* at (II) (D).

<sup>13</sup> *Id.* at (III) (A).

<sup>14</sup> *Id.* at (III) (B).

<sup>15</sup> Kan. Stat. Ann. § 22-3728 (a) (8); Kan. Admin. Regs. § 45-700-1 (a).

<sup>16</sup> Kan. Stat. Ann. § 22-3728 (a) (8); DOC IMPP 11-110 (III) (C).

<sup>17</sup> DOC IMPP 11-110 (III) (D) (2), Attachment B.

<sup>18</sup> *Id.* at (D) (2) (a).

<sup>19</sup> *Id.* at (D) (3), Attachment C.

<sup>20</sup> *Id.* at (D) (3) (a). Note that when the incarcerated individual’s file does not include the prosecuting attorney’s version of the most recent crime, the Unit Team Counselor must contact the prosecuting attorney’s office and request the prosecutor’s version of the crime. *Id.*

<sup>21</sup> *Id.* at (D) (3) (b).

<sup>22</sup> Id. at (D) (3) (c). The release plan is subject to Department review and approval. See also Kan. Admin. Regs. § 45-700-1 (c).

<sup>23</sup> DOC IMPP 11-110 (III) (D) (2), Attachment C.

<sup>24</sup> Id. at (D) (3) (c).

<sup>25</sup> Id. at (D) (4) and (D) (5).

<sup>26</sup> Id. at (D) (6).

<sup>27</sup> Id. at (D) (7).

<sup>28</sup> Id. at (D) (7) (a) and (b).

<sup>29</sup> Id. at (D) (8).

<sup>30</sup> Id. at (D) (9).

<sup>31</sup> Id. at (D) (10). The Prisoner Review Board rules also list notice requirements. Although they are referenced at different stages of the process, it is not completely clear whether they are separate requirements or inadvertently duplicative.

<sup>32</sup> Id. at (D) (11).

<sup>33</sup> Id. at (D) (11) (a).

<sup>34</sup> Id. at (D) (11) (b).

<sup>35</sup> Id. at (D) (12).

<sup>36</sup> Kan. Stat. Ann. § 22-3728 (a) (1); see also Kan. Admin. Regs. § 45-700-2 (c).

<sup>37</sup> Kans. Stat. Ann. § 22-3728 (a) (3) (A); Kan. Admin. Regs. § 45-700-2 (a) (1). The notice of the application must include confidential copies of the incarcerated person's medical or mental health report documenting the incapacitating condition, and the Department must maintain the confidentiality of those documents. Kan. Admin. Regs. § 45-700-2 (a) (1).

<sup>38</sup> Kan. Stat. Ann. § 22-3728 (a) (3) (B); Kan. Admin. Regs. § 45-700-2 (a) (2). If there is no known address for a living victim or, if deceased, for the victim's family, the Prisoner Review Board may not grant or deny the application until at least 30 days after notification is given by publication in the county of conviction. Kan. Stat. Ann. § 22-3728 (a) (3) (B). Note that the victim's notice must include a general description of the individual's incapacity but **not** of any confidential medical or mental health reports. Kan. Admin. Regs. § 45-700-2 (a) (2).

<sup>39</sup> Kan. Stat. Ann. § 22-3728 (a) (4); Kan. Admin. Regs. § 45-700-2 (b) (1).

<sup>40</sup> Kan. Admin. Regs. § 45-700-2 (b) (2).

<sup>41</sup> Kan. Stat. Ann. § 22-3728 (a) (8) (A); Kan. Admin. Regs. § 45-700-2 (b) (1) (A).

<sup>42</sup> Kan. Admin. Regs. § 45-700-1 (d).

<sup>43</sup> Kan. Stat. Ann. § 22-3728 (a) (4); Kan. Admin. Regs. § 45-700-1 (d).

<sup>44</sup> Kan. Stat. Ann. § 22-3728 (a) (8) (A); Kan. Admin. Regs. §§ 45-700-2 (b) (1) (C) (i) and (C) (ii).

<sup>45</sup> Kan. Admin. Regs. § 45-700-2 (b) (1) (C).

<sup>46</sup> Kan. Stat. Ann. § 22-3728 (a) (8) (G); Kan. Admin. Regs. § 45-700-1 (c).

<sup>47</sup> Kan. Admin. Regs. § 45-700-2 (b) (1) (B).

<sup>48</sup> Id. at (b) (1) (C), referencing Kans. Stat. Ann. § 22-3728 (a) (8).

<sup>49</sup> Id. at (b) (1) (C) (iii).

<sup>50</sup> Id.

<sup>51</sup> Id. at (b) (1) (C) (iv).

<sup>52</sup> Kans. Stat. Ann. § 22-3728 (a) (8) (F).

<sup>53</sup> Kans. Admin. Regs. § 45-700-2 (c). Note that the Prisoner Review Board has statutory voting requirements that are fairly detailed and generally based on the seriousness of the crime. See Kans. Admin. Regs. §§ 45-700-2 (c) (1) and (c) (2).

<sup>54</sup> Kan. Stat. Ann. § 22-3728 (a) (5); Kan. Admin. Regs. § 45-700-2 (c).

<sup>55</sup> Kan. Stat. Ann. § 22-3728 (b).

<sup>56</sup> DOC IMPP 11-110 (III) (D).

<sup>57</sup> Kan. Stat. Ann. § 22-3728 (a) (7).

<sup>58</sup> DOC IMPP 11-110 (III) (D) (14).

<sup>59</sup> Kan. Stat. Ann. §§ 22-3728 (a) (5) and (a) (6). Credit for the time during which the person is on Functional Incapacitation Release will count toward “service of the prison and post-release supervision obligations of determinate sentences or indeterminate sentences.” Kan. Stat. Ann. § 22-3728 (a) (5). See also DOC IMPP 11-110.III (14) (b) and (c).

<sup>60</sup> Kan. Stat. Ann. § 22-3728 (a) (5); DOC IMPP 11-110 (IV) (1) through (IV) (3).

<sup>61</sup> The annual reports are available on the Department of Corrections website at <https://www.doc.ks.gov/publications/publications/Reports>.

<sup>62</sup> Kan. Stat. Ann. § 22-3729; DOC IMPP 11-110.

<sup>63</sup> Kan. Stat. Ann. § 22-3729 (a) (1).

<sup>64</sup> Id. at (c).

<sup>65</sup> Kan. Stat. Ann. § 22-3729 (a) (2); DOC IMPP 11-110, Definitions.

<sup>66</sup> Kan. Stat. Ann. § 22-3729 (d); DOC IMPP 11-110, Policy. As referenced above in note 4, “off-grid” felonies in Kansas are the most serious crimes and include capital murder, murder in the first degree, and treason.

<sup>67</sup> DOC IMPP 11-110 (I) (B).

<sup>68</sup> Id. at (I) (A). Note that the Prisoner Review Board used to be called the Parole Board, and the Department rules, which have not been updated since 2011, still use that terminology.

<sup>69</sup> Id. at (I) (C).

<sup>70</sup> Id. at (II) (A).

<sup>71</sup> Id.

<sup>72</sup> Id. at (II) (B).

<sup>73</sup> Id. at (II) (C).

<sup>74</sup> Id. at (II) (D).

<sup>75</sup> Id. at (III) (A).

<sup>76</sup> Id. at (III) (B).

<sup>77</sup> Id. at (III) (D) (2), referencing Attachment B.

<sup>78</sup> Id.

<sup>79</sup> Kan. Stat. Ann. § 22-3729 (a) (1); DOC IMPP 11-110 (D) (2).

<sup>80</sup> DOC IMPP 11-110 (D) (3). Note that when the incarcerated individual's file does not include the prosecuting attorney's version of the most recent crime, the Unit Team Counselor must contact the prosecuting attorney's office and request the prosecutor's version of the crime. Id.

<sup>81</sup> Id. at (D) (3) (b).

<sup>82</sup> Id. at (D) (3) (c).

<sup>83</sup> Id.

<sup>84</sup> Id. at (D) (4) and (D) (5).

<sup>85</sup> Id. at (D) (6).

<sup>86</sup> Id.

<sup>87</sup> Id. at (D) (7).

<sup>88</sup> Id. at (D) (7) (a) and (b).

<sup>89</sup> Id. at (D) (8).

<sup>90</sup> Id. at (D) (9).

<sup>91</sup> Id. at (D) (11) (a).

<sup>92</sup> Id. at (D) (11) (c).

<sup>93</sup> Kan. Stat. Ann. § 22-3729 (a) (3).

<sup>94</sup> Kan. Stat. Ann. § 22-3729 (c). The Department uses the *Notice Regarding Release of Inmate Based on Imminent Death* form. DOC IMPP 11-110 (III) (14) (a), referencing DOC 11-110, Attachment E.

<sup>95</sup> See Kan. Stat. Ann. § 22-3729.

<sup>96</sup> Id. at (a) (3). The Chair may request additional medical information or evidence. Id.

<sup>97</sup> Id. at (a) (7).

<sup>98</sup> Id. at (a) (4). Note that although the statute says the Prisoner Review Board Chair can consider whether an appropriate release plan is in place, there is no detailed information in the statute or regulations on whether there is available assistance for the terminally ill individual in preparing a plan.

<sup>99</sup> Id. at (b).

<sup>100</sup> Id. at (a) (6).

<sup>101</sup> Id. at (a) (4) and (5).

<sup>102</sup> Kan. Stat. Ann. §§ 22-3729 (a) (4) and (a) (5); DOC IMPP 11-110 (IV) (1) through (IV) (4).

<sup>103</sup> Jonathan Shorman, “‘They Really Struggle’: As Inmates Grow Old, Kansas Prisons Plan for Geriatric Care,” *Wichita Eagle* (Feb. 2, 2020), <https://www.kansas.com/news/politics-government/article239842598.html>.