

Compassionate Release Toolkit

Crafting Compassionate Release Programs That Work

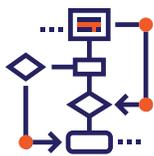
Nearly every state compassionate release program, with a couple of notable exceptions, could benefit from a thorough overhaul. FAMM knows from our research that very few people are granted compassionate release. In trying to understand why that is the case, we evaluated every program in every state that offers one.

Our **Compassionate Release Report Cards** grade those compassionate release mechanisms in seven performance categories. Every state program received an overall grade based on a possible 100 points. States with multiple forms of compassionate release also received an overall average grade.

Unfortunately, the majority of states' programs flunk compassionate release. Those that do not, nonetheless, could stand significant improvement in one or more of the areas we evaluated.

Knowing what doesn't work is the first step to fixing underperforming programs. The report card project's aim is to identify barriers to the success of well-intentioned programs that don't work as intended.

We offer this toolkit to lawmakers, advocates, and stakeholders interested in refurbishing the broken programs in their state. We hope that the ideas here will generate improvements in the reach, accessibility, design, and transparency of their state compassionate release programs.



Process

1. Before you pick up a pen, **gather the experts.**

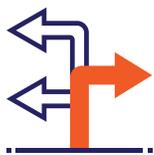
- **Medical doctors** familiar with correctional populations can define medical terms and identify criteria.
- **Mental health** professionals and **geriatricians** with corrections expertise can craft criteria aimed at age-related mental and medical health conditions such as dementia.
- **Reentry specialists** and **social workers** can help craft the release planning criteria and requirements to help ensure public assistance, housing, and health care supports are in place to ensure an incarcerated individual's safe return to the community.

2. Confer with stakeholders.

- Meet with representatives from corrections (including health care providers), the district attorney, parole board, judiciary, defense bar, nursing home operators, hospice coordinators, victim representatives, probation/parole officers, and the executive branch. They will help ensure the program design complements existing law, policy, and practice. In addition, getting their buy-in can be quite useful.
- Consult as well with currently and formerly incarcerated people and their loved ones. Their experiences with compassionate release will help ensure programs are attentive to the needs of the individuals seeking to use them.

3. Know the numbers.

- Consult with corrections to learn about the population of individuals you may want to craft the program to cover (e.g., number of people age 55 and over; cost of care for debilitated, aged, and terminally ill individuals).
- Run bed-space models and comprehensive cost-benefit analyses.



Guideposts

Draft legislation, regulations, and policy with these suggestions in mind.

- 1. Clearly define** eligibility criteria (and/or give clear direction to the rule-making body if delegating the job of defining eligibility).
- 2. Assign jobs:** Identify all essential tasks, such as gathering documents and assessing eligibility, and identify officials or offices responsible for completing them.
- 3. Establish deadlines** by which essential tasks must be completed.
- 4.** Guide evaluators and decision-makers by writing **standards** that are easy to understand and apply.
- 5. Trust the decision-maker:** Avoid categorical exclusions, and ensure decision-makers have sufficient guidance to do their jobs promptly and with confidence.
- 6. Consult the state constitution and sentencing law** for ideas on how to craft compassionate release in a way that is grounded in your jurisdiction's sentencing objectives and release mechanisms.



Components

Essential components such as eligibility criteria and means of release (reduction in sentence, parole, etc.) should be outlined in statute, while regulations should cover examples, processes, staffing, time frames, and standards. Some examples and considerations include:

1. Criteria

- Medical criteria.
 - **Terminal illness: a condition** with an end-of-life trajectory. **Avoid** predictive criteria (e.g., death within x months), because such prognoses are unreliable and doctors hesitate to make them or overestimate time left to live. Do **include** nonexhaustive examples of terminal conditions.
 - **Serious and chronic medical condition** that substantially diminishes the incarcerated person's ability to care for self in the prison setting. It is imperative that medical, mental health, and geriatric professionals with experience in health care for incarcerated individuals participate in defining release criteria for this category.
 - **Serious cognitive impairment**, such as traumatic brain injury or advanced dementia, that limits the individual's ability to comprehend direction or control conduct.

- **Age-related** chronic physical or mental health condition that substantially diminishes the individual's ability to care for self in the prison setting.
- **The presence of a virus or serious contagious event** from which the incarcerated person cannot be protected due to the person's medical condition that would not otherwise qualify them for compassionate release but places them in potential danger of serious complications or death.
- Other criteria.
 - **Age plus time served** to evaluate people who are advanced in years and have served a portion of but not completed their sentence. This ground is included in many states and recognizes that, on average, people age out of criminal conduct so that completing a lengthy sentence may no longer serve its original goals.
 - Extreme **family circumstance**, such as the incapacitation or loss of the parent or other caregiver of the individual's minor child or children.
 - **Exceptional challenges** presented by prison environment and culture (e.g., corrections officials perpetrating or facilitating sexual abuse of the incarcerated person); selfless acts of courage (e.g., individual risks life to save corrections official in danger from others); or other developments.

2. Information and Identification

- Equip, train, and oblige **prison health care, social work, and other staff** to routinely evaluate incarcerated people in light of eligibility criteria. Require them to identify those who may meet objective criteria to appropriate staff.
- Inform **people newly arriving** to prison of compassionate release criteria and the application process, and include the information and any forms in easily accessible materials (bulletin boards, law library, prison handbook).
- Include the information about eligibility and application on the institution website so that **loved ones and attorneys** can apply on behalf of incarcerated people.

3. Application

- **Allow anyone** to begin the application process, including the incarcerated person, legal counsel, family, religious counselors, prison staff, or guardian ad litem. (Make provisions for ascertaining whether the application is made with the person's consent if initiated by others.)
- **Require prison medical staff** to begin the application process or assist the individual in doing so, once having identified the individual as meeting medical criteria.
- Specify that **corrections staff will assist** incarcerated people who request help in applying for and pursuing compassionate release requests.
- Provide **legal representation** for individuals seeking compassionate release to assist at all stages of assessment and decision-making.

4. Keeping Applicants and Loved Ones Informed

- Ensure that **next of kin** are kept apprised of the applicant's condition in the event that the applicant is unable to do so due to illness or cognitive challenges.
- Ensure that **applicants, counsel, and family** are kept informed as the application or referral moves through the process.

5. Assessment, Review, and Decision

- Design a straightforward **set of steps** to follow when evaluating whether the incarcerated individual meets the objective criteria.
- **Identify and dedicate officials and staff at each step** of the assessment, review, and decision-making points, and **give them clear guidance** on what they are to determine and by when.
- **Avoid duplicative reviews, and impose manageable time limits** on application review processes. Create a workflow and schedule, and stick to them.
- Decide **who will make the release decision** (parole board, court, corrections head, governor), and ensure they have what they need to make the decision and have clear guidance on criteria and time limits.

6. Release Planning

- **Develop a comprehensive release plan** that covers all contingencies. See, e.g., CSG, "Preparing People for Reentry: [Checklist for Correctional Facilities](#)" and "Compassionate Release Clearinghouse COVID-19 Project: [Reentry Plan Considerations](#)."
- **Begin release planning as soon as an applicant is identified.**
 - Ensure that all **Medicaid-eligible individuals remain enrolled**, even though they cannot collect benefits while incarcerated. That speeds up the process of securing funding for people returning from prison, including people leaving by way of compassionate release.
 - Identify a **team in the prison comprised of a social worker, case worker, and release planner** who will work with the applicant and/or the applicant's representative to develop a comprehensive release plan.
 - Consider creating a **release navigator** position within the corrections department.
 - **Working with the applicant, counsel, and loved ones on the outside**, if available, the release planning team should identify supports already in place and work to develop a plan to address gaps in housing, insurance coverage, income support, transportation needs, access to durable medical equipment, and caretaker support.
 - At the earliest opportunity, the team should apply for or help the applicant apply for **state identification cards** and any public or Veterans Affairs **benefits**, housing and income assistance, insurance, etc.
 - Ensure that any **required notifications** of intent to secure early release are made (to registered victims, law enforcement officials, probation and parole authority, courts, etc.).

7. Appeal/Reapplication

- Provide the applicant and/or the applicant's counsel a way to **appeal an adverse decision**, and advise them promptly of their rights and obligations.
- Establish **no limit on reapplication**, or allow changed events or conditions to determine when and if a denied applicant may reapply.
- An applicant's failure to secure compassionate release should not have any impact on the individual's eligibility for other forms of release (parole, earned good time credits, etc.).

8. Revocation

- Do not use the previously incarcerated person's improved medical condition as grounds to revoke the individual's release. Instead, **limit revocations** to address serious violations of the terms of release, and provide constitutionally adequate due process for all revocation proceedings.

9. Tracking and Public Reporting Outcomes

- Require that all authorities involved in compassionate release (the Department of Corrections, parole body, courts) maintain comprehensive data collection and report to the legislative body about applicants, applications, and outcomes. Include demographic information. Make those reports publicly available. (See, for example, Massachusetts and federal reporting requirements.)