

Massachusetts

Overall Grade for
Massachusetts

Total Grade

90
/100

Letter Grade

A-

Program Grades

Medical Parole

Total Grade

90/100

Letter Grade

A-

Medical Parole

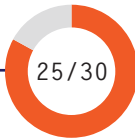
Total Grade

90 /100

Letter Grade

A-

Eligibility Criteria



5/10 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. **+5**

Procedures

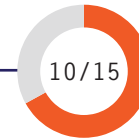


5/5 Documentation and assessment are straightforward, lacking multiple or redundant reviews and authorizations.

5/5 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

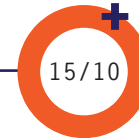


5/5 Clinical and other staff can identify potentially eligible individuals and initiate the process.

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

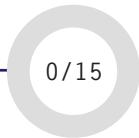


5/5 Agencies provide comprehensive release planning.

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

5/5 Release planning begins early in the process.

Agency Policy Design



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



5/5 Agencies are obliged to gather, compile, and report release data to legislature.

5/5 Reporting is made available to the public via annual reports or other means.

Right to Counsel and Appeals

15/10

5/5 Program allows counsel to represent people before decision-maker (i.e., parole board, commissioner, or court).

+ Extra credit: Denials are appealable. **+5**

5/5 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**



Overall Extra Credit

+5 By law, the Department of Correction Commissioner and other officials must file comprehensive annual reports with legislative committees. FAMM awarded the program extra credit because, among other measures, the reports must include demographic information.

The Numbers

The Medical Parole law requires the Department of Correction Commissioner, among others, to file an annual report with key legislative committees and legislative clerks.

2019 The first year after enactment of the Medical Parole law, three people earned Medical Parole.

2020 The program released 31 people.

High and Low Marks

HIGH MARKS

- FAMM awarded Massachusetts' Medical Parole mixed reviews for **eligibility criteria**. The program nonetheless earned a strong grade. It excludes no one from consideration. Moreover, the program's 18-month time-left-to-live standard for terminal illness garnered the program **extra credit**. Those 18 months, combined with statutory deadlines for carrying out assessment and decision-making, should provide sufficient time to complete the process for people nearing the end of life.
- The program earned high marks for its **procedures**. Medical parole documentation and assessment processes, described in the statute, are straightforward, not duplicative, and include deadlines for actors responsible for them.
- Notwithstanding a bumpy start in which the Massachusetts Supreme Judicial Court upheld challenges to an initial set of regulations that required incarcerated people to develop their own Medical Parole release plans, the program's **release planning** now appears to be on track. Discharge planning is comprehensive, takes place early in the process, includes identifying sources of support and public assistance, and makes the Department of Correction responsible for putting it all together.
- The Medical Parole **data collection and public reporting** requirements are among the best in the country, earning the program top marks in graded categories and **extra credit** for tracking and reporting demographic information.

LOW MARKS

- Massachusetts' Medical Parole earned only half marks for some **eligibility criteria** categories because it does not clearly define standards and they could be more generous. For example, the program extends eligibility to people who are permanently incapacitated. It defines that criterion as a physical or cognitive incapacitation that appears irreversible and that is so debilitating the individual cannot pose a risk to public safety. The standard does not define incapacitation; it merely repeats the word and then layers a public safety measure that reviewers may find difficult to determine. People who are terminally ill also must be so debilitated that they don't pose a threat to public safety. That is unnecessary and ungenerous.
- The fact that the program does not have final agency regulations several years after enactment of the statute calling for them results in zeros across the board in the **policy design** category. The Massachusetts Supreme Judicial Court struck down initial agency regulations, and replacement regulations are pending but had not been finalized at publication time.
- Very few people were released in the program's first years. Normally, FAMM would subtract points for such a poorly performing program that is otherwise so well designed. We did not do that here because we expect those low numbers were due to initial agency rules that acted to limit the number of people who could benefit from Medical Parole and which the courts have since thrown out.