



Compassionate Release Report Card • October 2022

# Michigan

Overall Grade for Michigan

Total Grade

**36**  
/100

Letter Grade

**F**

Program Grades

|  | Total Grade   | Letter Grade |
|--|---------------|--------------|
| <b>Medical Parole</b>  | <b>33/100</b> | <b>F</b>     |
| <b>Executive Clemency/Commutation Due to a Deteriorating or Terminal Medical Condition</b> | <b>39/100</b> | <b>F</b>     |

Find all compassionate release resources on FAMM's site →

famm.org



# Medical Parole

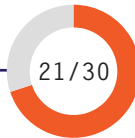
Total Grade

**33** /100

Letter Grade

**F**

## Eligibility Criteria



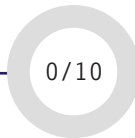
**10/10** Clearly set out with understandable and measurable standards.

**5/10** Generous or not unduly restrictive.

**6/10** 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

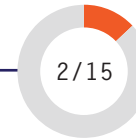


**0/5** Documentation and assessment are straightforward, lacking multiple or redundant reviews and authorizations.

**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

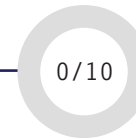


**2/5** Clinical and other staff can identify potentially eligible individuals and initiate the process.

**0/5** Incarcerated people, their loved ones, and advocates can initiate the process.

**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

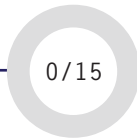


**0/5 UTD** Agencies provide comprehensive release planning.

× **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

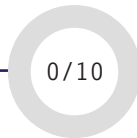


**0/5** Agency rules exist for all stages of identification, initiation, assessment, and decision-making.

**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



**0/5** 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**



## Overall Extra Credit

**+10** A person serving Medical Parole who is placed in a medical facility has, under Michigan law, the same rights as any other individual living in the facility. Michigan law does not hold the facility responsible to enforce parole conditions or report violations of parole terms. "The medical facility shall comply with state and federal laws and regulations that protect resident rights and state and federal laws and regulations for skilled nursing facilities, regardless of the conditions of parole ..." That provision in the law is designed to protect the dignity and rights under law of individuals granted Medical Parole living in skilled nursing facilities. Other states would do well to follow Michigan's leadership in this regard.

\* 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

Michigan does not publish information about Medical Parole, and the Parole Board did not respond to FAMM's request for the data about Medical Parole grants in 2019 and 2020.

## High and Low Marks

### HIGH MARKS

- Michigan's Medical Parole **eligibility criteria** are straightforward and easy to understand and apply. Grounds include mental disorders, such as dementia and other cognitive impairments. Few compassionate release programs address mental health conditions.
- The fact that Michigan protects the rights of people on Medical Parole living in skilled nursing facilities earned the program **extra credit**.

### LOW MARKS

- While the **eligibility criteria** are easy to understand, they are neither generous nor necessarily realistic. For example, individuals with cognitive impairments must also be unable to perform two or more activities of daily living and must be in need of nursing home care. FAMM believes that standard is unduly strict as is the categorical exclusion of anyone other than those who score "low" on a validated risk assessment tool.
- Michigan has had Medical Parole on the books since 2016, but neither the Department of Corrections nor the Parole Board have rules or regulations implementing the program. Consequently, Michigan's Medical Parole flunks both **policy design** and **procedures**. For example, while the medical criteria stated in the statute are relatively straightforward, the Bureau of Health Care in the Department of Corrections, which is responsible for initiating the Medical Parole process, does not have any policies whatsoever about how to identify, document, and assess individuals who may be eligible. Similarly, the Board, which is responsible for determining whether to release an individual to Medical Parole, has no guidelines or information on how it determines that an individual meets release criteria.

**LOW MARKS (CONTINUED)**

- FAIMM could not determine what, if any, role the Department or Board plays in **release planning** (notwithstanding the affirmation of the rights of medical parolees in medical facilities, which earned the program extra credit). The only mention of discharge arrangements is a provision requiring people approved for Medical Parole to agree to placement in an approved medical facility to address their medical care.
- Michigan does not afford a **right to counsel** for Medical Parole hearings. In fact, it forbids attorneys, and specifically public defenders, from representing individuals in parole hearings. That and the fact that individuals do not have **appeal** or reconsideration rights that FAIMM could locate resulted in a failing grade for this category.

# Executive Clemency/ Commutation Due to a Deteriorating or Terminal Medical Condition

Total Grade

**39** /100

Letter Grade

**F**

## Eligibility Criteria

10/30

**0/10** 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.

**x 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

4/10

**0/5** 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. **+2**

## 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 UTD** Agencies provide comprehensive release planning.

**x 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

12/15

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

**5/5** Agency rules are consistent with and/or complement the statute, are up to date, and internally consistent.

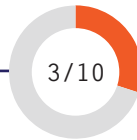
**2/5** Rules provide clear guidance to reviewers and decision-makers about steps to take and standards to apply.

## Data Collection and Public Reporting

5/10

**5/5** 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.



## 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**

**3/5** 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**

## The Numbers

Michigan does not publish information about Executive Clemency/Commutation Due to a Deteriorating or Terminal Medical Condition, and the Parole Board did not respond to FAMM's request for the data about releases in 2019 and 2020.

## High and Low Marks

### HIGH MARKS

- It appears no one is excluded from **eligibility** for Michigan's Executive Clemency/Commutation Due to a Deteriorating or Terminal Medical Condition.
- **Agency policy design** received strong marks. Unlike Michigan's Medical Parole program, Executive Clemency provides policy guidance for the Parole Board's consideration of applicants, which includes some information about the process for those facing a deteriorating or terminal medical condition. Rules cover all the steps in the assessment and decision-making continuum; they are consistent with the statute; and they provide relatively clear guidance about steps and standards.
- While **procedures** overall are poor, the program garnered extra credit because it permits the Governor to expedite the Board's evaluation, and the Board can waive certain other notification time frames when considering applicants who are terminal or otherwise medically vulnerable (see procedures below).

### LOW MARKS

- Neither the Governor's office nor the Board provides definitions of the **eligibility criteria** for "deteriorating or terminal medical condition." Lacking definition makes it difficult for actors in the system to determine who is entitled to consideration. That uncertainty can overlook people whom lawmakers intended to benefit from the program.

\* 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.

**LOW MARKS (CONTINUED)**

- Documentation and assessment **procedures** are anything but straightforward. The Board must do an initial review of the application within 60 days of its receipt to determine whether it has merit. If the majority of the Board expresses interest in proceeding, other parties are notified and given 30 days to object, after which the Board can decide to not proceed. If there is still interest in proceeding, another 30-day period begins within which the Board gathers more information from victims, the court, and other parties. The Board may decide to end the process after that step. If it elects to proceed, it conducts a final evaluation of the individual. Those multiple, and potentially time-consuming, reviews are redundant and unnecessary and potentially result in baseless denials because the Board does not gather any medical documentation or evaluation until the applicant has cleared the three initial hurdles.
- Executive Clemency does not appear to include **release planning support**. FAMM considers it imperative that agencies support people, such as those with deteriorating or terminal medical conditions that Executive Clemency aims to benefit, by helping them secure post-release placements, public benefits, and medical care.