

Compassionate Release Report Card • October 2022

# Texas

Overall Grade for Texas

Total Grade

**62** /100

Letter Grade

**D-**

Program Grades

	Total Grade	Letter Grade
<b>Medically Recommended Intensive Supervision</b>	<b>86/100</b>	<b>B</b>
<b>Emergency Medical Reprieve</b>	<b>37/100</b>	<b>F</b>

Find all compassionate release resources on FAMM's site →

famm.org



# Medically Recommended Intensive Supervision

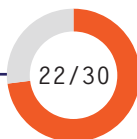
Total Grade

86 /100

Letter Grade

B

## Eligibility Criteria



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

**7/10** Generous or not unduly restrictive.

**5/10** 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

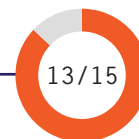


**3/5** Documentation and assessment are straightforward, lacking multiple or redundant reviews and authorizations.

**3/5** 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. **+5**

## 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.

**3/5** 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

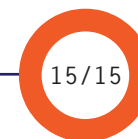


**5/5** Agencies provide comprehensive release planning.

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

**0/5** Release planning begins early in the process.

## Agency Policy Design

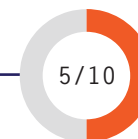


**5/5** Agency rules exist for all stages of identification, initiation, assessment, and decision-making.

**5/5** 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.

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

10/10

## 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**

**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. **+5**

## The Numbers

According to the Board of Pardons and Paroles' annual reports:

**2019** The Department of Criminal Justice screened 2,803 people for Medically Recommended Intensive Supervision (MRIS) and presented 196 cases to the Board. The Board approved 76 people for MRIS, 59 of whom were terminally ill and 17 in need of long-term care.

**2020** The Department screened 2,858 people and presented 201 to the Board. The Board approved 61 individuals for MRIS, 40 of whom were terminally ill and 21 in need of long-term care.

## High and Low Marks

### HIGH MARKS

- The **eligibility criteria** for Texas' Medically Recommended Intensive Supervision (MRIS) are a model of clarity and breadth. Criteria cover grounds many states use, including terminal illness, disability, and age plus time served. In addition, MRIS commendably covers certain intellectual disabilities and mental illness. Guidance includes examples to help corrections staff identify potentially eligible people.
- The program makes **engaging the process** for MRIS available to incarcerated individuals, their loved ones, legal counsel, and corrections staff. It also obliges staff to refer people who are in a persistent vegetative state, are within six months of death, or who have one of a number of serious conditions. Texas is one of the few states to require staff to refer eligible people and give staff very specific guidance to help them do so by providing a clear and comprehensive list of qualifying conditions.
- **Agency policies** provide actors in the MRIS chain with thorough directions about steps to follow and standards to apply throughout the process.
- Texas' MRIS provides comprehensive **release planning**. FAMM awarded the MRIS program **extra credit** because planning includes securing housing and applying for Social Security benefits. Unfortunately, release planning does not occur until after an incarcerated individual has been granted MRIS, which undoubtedly results in delays in release. Such delays could threaten the timely release of terminally ill people who are ineligible for MRIS until they are within six months of death.
- People denied MRIS may **reapply** six months later or if documentation shows a significantly worsening medical condition.

**LOW MARKS**

- The MRIS program's marks for **eligibility criteria** suffered because it limits MRIS based on terminal illness to individuals who are within six months of death, which FAMM considers too short of a time frame. It also requires that people eligible based on a chronic disability be substantially functionally limited in three or more major life activities and require lifelong support. FAMM also subtracted points because of the numerous categorical limitations on eligibility, although people convicted of some of those offenses may be eligible if terminally ill, in a vegetative state, or suffering organic brain syndrome with extreme mobility impairment.
- While MRIS **procedures** are quite good, we deducted points because the Board of Pardons and Paroles' procedures include an initial review step that adds a layer and time to the process that may be unnecessary. FAMM also gave partial marks for procedures because some, but not all, steps have deadlines.

# Emergency Medical Reprieve

Total Grade

37 /100

Letter Grade

F

## Eligibility Criteria

20/30

**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. **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

2/15

**0/5** Clinical and other staff can identify potentially eligible individuals and initiate the process.

**2/5** 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

10/10

**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.

5/10

## 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**

**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**

## The Numbers

A report by the Texas House of Representatives Research Organization provides the following information:

- In FY 2019, the Board of Pardons and Paroles received 132 requests for Emergency Medical Reprieve. The Board's Clemency Section sent three cases to the full Board; the Board did not recommend any of those to the Governor.
- As of June 2020, the Board received 68 requests. The full Board voted on two cases and recommended one to the Governor; the Governor denied that request.

## High and Low Marks

### HIGH MARKS

- **Eligibility criteria:** It appears that Texas excludes no one from applying for Emergency Medical Reprieve with the exception of people with detainees.
- People denied Emergency Medical Reprieve may **reapply** after six months or when their condition deteriorates.
- The Texas legislature **tracks data and reports** on Emergency Medical Reprieve requests. Very few states provide as much transparency.

### LOW MARKS

- **Eligibility criteria** suffer from vagueness and narrowness. People who are totally disabled may apply, but the description of total disability – having a severe, chronic disability that is likely to continue indefinitely – is imprecise. Similarly, people are eligible if they require medical treatment not available in the Texas Department of Criminal Justice and as a consequence suffer “substantial functional limitations.” It is not clear what constitutes substantial functional limitations. In addition, terminally ill people are not eligible until within six months of death, which is quite a short time frame in FAMM's view.
- The Department and Board of Pardons and Paroles provide no publicly available rules or guidance to govern assessment and decision-making. As a consequence, the program flunked the **agency policy design** and **procedures** categories.
- While incarcerated individuals may apply for Emergency Medical Reprieve, they are entirely responsible for securing a medical placement and including a signed letter to that effect from the physician and/or medical facility that will take charge of the individual's care. The state provides no **release planning support** whatsoever.