



**FAMM**

# Grading the States

The State Compassionate Release  
Report Card Project

AUTHOR

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We heartily thank Joy Metcalf, of STET Editing Services LLC, who edited, and Shannon Ryan, of Made With Relish, who designed the report cards, toolkit, and report.

## Dedication

We dedicate this project to everyone who has fought to secure compassionate release for a loved one in prison and to those who have shared that journey with us. We draw inspiration from their courage and example. We hope this work honors their sacrifices by generating the reforms these systems need.

## About the author

Mary Price serves as FAMM's General Counsel. She has worked in one way or another since 2001 to reform federal and state compassionate release programs and authored FAMM's 2018 report: "Everywhere and Nowhere: Compassionate Release in the States".

# Donald Brown<sup>1</sup>

In May 2020, Donald Brown was 68 and dying. Poorly treated complex Type 2 diabetes had led to the amputation of his left leg below the knee. Congestive heart failure followed. Dementia, caused by a stroke, had rendered him unable to remember where he was. He sometimes thought he may be in a halfway house. Other times, he was certain he was in Virginia. But he wasn't. He was a Maryland state prisoner. By the time Mr. Brown sought Medical Parole, he was confined to a bed or wheelchair night and day and relied on others to help him with the basic activities of daily living: moving from place to place, eating, dressing, bathing, and toileting.

Maryland's Medical Parole is one of the worst compassionate release programs in a nation of failing programs. One reason is that the Maryland Medical Parole statute and the Parole Commission rules disagree about what makes an incarcerated person eligible. But that dissonance was not the reason the Parole Commission denied Mr. Brown Medical Parole. Mr. Brown met every conflicting eligibility criteria. He was chronically incapacitated and suffered debilitation so severe that he was physically incapable of posing a danger to society (statutory criteria). He was also "imminently terminal" and had a condition that indicated that continued incarceration would serve no useful purpose (Parole Commission criteria). Continued incarceration of a person who is unaware he is incarcerated undoubtedly serves no useful purpose.

As is the case in many state programs, no publicly available information explains what factors the Maryland Parole Commission considers when deciding whether to release a person like Mr. Brown. The Commission is free to ignore the legal standards and apparently did so in this case. It provided no reason for the denial. When counsel became involved and reapplied, the Commission finally offered an explanation for its previous recent denial of Medical Parole. This time, it explained that Mr. Brown's conviction for armed break-ins, which he committed in the 1980s and for which he had already served 35 years, supported the denial.

There is no question that public safety must be a factor in compassionate release decisions. Nearly every state program Famm graded includes a requirement that a person should only be released if doing so does not endanger public safety. Mr. Brown's crimes were without question serious. His addiction to heroin as a minor fueled the offenses. He broke into houses to steal things to sell so he could buy more drugs.

But that was decades ago, and Mr. Brown was well past any capacity to reoffend, much less threaten the public. Incarceration had long ago lost any meaning for him and society.

<sup>1</sup> This account is based on an [op-ed](#) co-authored by State Sen. Shelly Hettleman and Ms. Vivian Penda, "Compassionate Release From Prison: A Moral Imperative," *Baltimore Sun* (January 26, 2022); "Donald Leroy Brown," [Memorial](#) by Vivian Penda, *Mourning Our Losses* (December 16, 2020); Vivian Penda, *Testimony of Vivian Penda in Support of S.B. 562 before the Maryland Senate Judicial Proceedings Committee* (February 15, 2022); as well as conversations with Mr. Brown's attorney.

**Mr. Brown was well past any capacity to reoffend, much less threaten the public. Incarceration had long ago lost any meaning for him and society.**

One of the few categories for which Maryland earned a passing grade is for allowing counsel to represent individuals seeking compassionate release. People lucky enough to secure a lawyer have a better chance of leaving prison at the end of life. Few people have that option.

Luckily, Donald Brown was one of them.

His pro bono attorney sought and won reconsideration. The Maryland Parole Commission finally granted Mr. Brown Medical Parole on June 18, 2020.

But he did not become a free man that day because the Department of Corrections had failed to prepare a release plan for him. Release planning is essential so that people at the end of life or in need of skilled nursing care can readily transfer to a safe setting with funding in place to cover medical and living expenses. Two weeks were lost as his attorney and a social worker scrambled to find a skilled nursing facility that could take him in.

Mr. Brown finally left prison on July 2, 2020, and died four days later. His mother, who had fought against indifference and resistance from the Department of Corrections for information and who was repeatedly denied contact with her dying son, reflected about the end of his life:

He was prepared to fight his diseases, but never had the chance to lace up his gloves. He did not die on his terms. He did not want to leave us. He loved us. He will continue to love us. Donald died a man. He died a free man, which is something he asked of me many years ago, *please don't let me die in prison*. We fought that battle, and won.

Donald Brown's story illustrates how poorly designed compassionate release systems fail the very people they intend to help. His odyssey is not unique. Many compassionate release programs lack important features missing in his case: coherent and generous eligibility criteria, consistency between policies and laws, family support and notification, evaluation and decision-making standards, transparency, and early and comprehensive release planning.

## Introduction

FAMM's work to transform compassionate release began over 20 years ago, motivated by the distress expressed to us by the families and loved ones of people in prison who were sick and dying. They were frightened and unable to get information about their loved ones' medical conditions, much less about how to apply for the individuals' compassionate release or even whether they could.

As we have worked over the years to reform compassionate release programs, we have come to understand that others, besides people in prison and their loved ones, need information about how compassionate release works and how it fails to work. They include the lawmakers who authorized these programs and the public whose tax dollars pay for incarceration.

Knowing that a program fails to live up to its promise is the first step to improvement, but knowing how and why it fails is the essential next step. Our report cards aim to provide that information.

We did not grade on a curve. Still, we were surprised to find that the majority of states flunk compassionate release. We offer the report cards not to shame failing states but to help concerned stakeholders understand the practical barriers to compassionate release. We hope these report cards spur people to ask and answer the questions that will trigger reform.

## A little history

In 2018, FAMM launched a groundbreaking project to describe every state compassionate release program. We conducted an exhaustive review of statutes, agency regulations, policies, rules, handbooks, FAQs, law review and news articles, and other materials. We published [51 memos](#) describing every jurisdiction's compassionate release program in detail and a report: "[Everywhere and Nowhere: Compassionate Release in the States](#)".

Each memo covered:

- **Eligibility**, including criteria and any categorical exclusions.
- **Application and referral**, addressing who can start the compassionate release process and how.
- **Documentation and assessment**, explaining the steps for evaluating whether a person meets the eligibility criteria.
- **Decision-making**, outlining who decides to grant compassionate release and steps they must take and standards they must apply.
- **Post-release considerations**, covering denials, appeals, and revocation standards.
- **Reporting and statistics**, examining whether outcomes are tracked and reported and to whom.

**Given the widespread commitment to some form of compassionate release, our single most disturbing and illuminating finding was that while nearly every state had some form of compassionate release in place, they seldom used them.**

We found remarkable diversity among the 50 jurisdictions that had programs on the books. While some were more comprehensive than others, every state program provided at least one avenue to early release. In each state, a legislature had considered and authorized compassionate release; and agencies had formulated rules, assigned roles, and constructed procedures to implement the lawmakers' intent. A number of states had reporting requirements so the legislature could track outcomes.

Given the widespread commitment to some form of compassionate release, our single most disturbing and illuminating finding was that **while nearly every state had some form of compassionate release in place, they seldom used them**. We wondered why this was. We turned to our research for answers.

Among the most common barriers we discovered were:

- **Categorical exclusions.** Quite a few state laws exclude individuals based on their offense of conviction, the nature of their sentence, or the length of time they have served.
- **Strict or vague eligibility criteria.** A number of states have very restrictive eligibility rules or poorly designed criteria that lack explanation.
- **Missing or contradictory guidance.** We found programs with incoherent or outdated rules and, in some cases, no publicly available rules whatsoever.
- **Complex and/or time-consuming reviews.** Many state programs have onerous review procedures or fail to include deadlines within which to complete essential tasks.
- **Unrealistic time frames.** A handful of states do not make terminally ill people eligible for release unless they are quite close to death. That, coupled with time-consuming, redundant review and decision-making processes, means people die awaiting a decision.

We also found some programs that included best practices, such as well-defined and generous eligibility standards, and clear rules and deadlines for agency staff and officials responsible for compassionate release to follow.

But, they weren't enough.

# The Report Card Project

In 2021, we returned to examine all the states and the District of Columbia and update our memos. While a handful of programs had improved, we were dismayed to find that the barriers we described in “Everywhere and Nowhere” continue to impede the use of compassionate release. Very few people benefited from compassionate release in 2019 and 2020. That finding was especially disturbing because COVID-19 had struck prisons exceptionally hard. But the overwhelming majority of states did not use or reform their compassionate release programs to free people vulnerable to serious illness or death should they contract COVID-19.

So little had changed since FAMM published “Everywhere and Nowhere” that we decided we needed to go further than an update. So, we chose to issue report cards on how well today’s state compassionate release programs eliminate the barriers to implementation and exemplify compassionate release best practices identified in our original research.

## Methodology

We graded every state’s compassionate release program on a number of features based on what we had learned from the **publicly available**<sup>2</sup> statutes, rules, regulations, policies, and reports, and documented in our [state memos](#). Some categories have extra credit options. We also include a potential catchall extra credit option at the end of the report card. We use that to add points for a program’s exceptional features that we had not anticipated or that occur very rarely. Similarly, we occasionally penalized a program by taking away points it had earned. For example, we deducted points from **Alaska’s Geriatric Parole** program. Despite some very good features that look great on paper, no one benefited from Geriatric Parole in the study period.

We reported information on compassionate release decisions from 2019 and 2020 to the extent we could find them. We used public reports, responses to open-records requests, and – occasionally and only when necessary – news accounts.<sup>3</sup>

<sup>2</sup> FAMM was unable to look more deeply into how programs work beyond publicly available information. In our state memos, we cite the statutes, regulations, policies, and rules we used to describe compassionate release program features. If we could not find information about, for example, agency responsibility for release planning, we had to assume that it was not part of the compassionate release process. We recognize that some states may not make their rules available to the public, but because we believe everyone should be able to gain access to information about how their states’ compassionate release programs work, we based our grades on what our review of public sources could uncover.

<sup>3</sup> As previously discussed, from time to time we deducted points from programs based on the fact that very few people benefit from them. We based that information on publicly available reports or responses to our open records requests for release data. We recognize that deducting points disadvantages programs with greater transparency, but on balance, we considered it important to identify programs that are failing, despite what FAMM considers to be good features that should ensure their success.

Where we were unable to assign a grade in a particular category due to lack of information, we gave the program a failing grade of “0 – Unable to Determine (UTD)” for that category. For example, if we found no mention of how release planning takes place but suspected it may, we graded release planning as “0 – UTD.” On the other hand, if we were reasonably sure no release planning takes place, we graded that category zero.

Most states have more than one form of compassionate release. Each program received its own set of grades. For example, we graded California’s Medical Parole, Recall of Sentence, and Geriatric Release programs separately. We then assigned an overall grade to California, which is the average of the three.

## How to read the report cards

First, a reader should **examine the report card**, which grades aspects of each program with a total possible grade of 100 (before extra credit is applied). We explain the grading criteria below. Each report card includes a narrative section at the end, discussing the bases for some of the high and low marks.

Readers who want to learn more about the compassionate release program we graded can next **go to the state compassionate release memo**, which is linked at the bottom of every report card. Those state memos outline each program with specificity, include citations to all our sources, and link to primary research material.

Generally, our report cards do not include individualized recommendations for reform. Instead, we provide a **toolkit**, which includes guidance to policymakers and stakeholders on how to approach reforming state compassionate release programs.

Finally, to see how a state compares with other states, visit the **[national report card map](#)** included in this report.

## How we graded

FAMM graded the compassionate release programs for each state in the following categories:

- Eligibility criteria
- Engaging the process
- Agency policy design
- Procedures
- Release planning support
- Data collection and public reporting
- Right to counsel and appeals

Each category has two to three **elements**. Each element is described below and includes an explanation about why FAMM considers the element important to a well-designed and functioning compassionate release program. The numbers after the elements represent the total number of points each can earn. We totaled the grades for each element to calculate the category grade. The total program grade is the sum of all categories plus any overall extra credit, minus any overall penalty points.



## Category

### Eligibility Criteria

30 possible points

- 10 Clearly set out with understandable and measurable standards.
- 10 Generous or not unduly restrictive.
- 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.

FAMM considers the design and breadth of eligibility standards to be the most important component of a compassionate release program, and we weighted the grading accordingly.

## Elements

- **Eligibility criteria should be clearly stated**, readily measurable, and informed by evidence and medical science. Poorly defined criteria frustrate program objectives because evaluators and decision-makers must supply their own definitions. Without sufficient guidance, they cannot be confident they are referring or releasing the right people at the right time. Consequently, they may fail to move worthy individuals forward. Many states include undefined conditions among their criteria.
  - **Connecticut**, for example, makes people of "advanced age" eligible for Compassionate Parole Release but does not define "advanced." On the other hand, the eligibility criteria for **Texas' Medically Recommended Intensive Supervision** are a model of clarity and breadth. Guidance includes examples to help corrections staff identify potentially eligible people.
- Compassionate release criteria **should be generous or at least not unduly restrictive**. A number of state programs use very strict criteria. We found some that will not consider a person to be debilitated unless the individual is completely bedridden or requires round-the-clock care. Narrow criteria limit the number of people who can apply for release and leave behind people who ought to be considered.
- We believe **everyone** who meets objective compassionate release criteria should have the chance to be considered. **Categorical exclusions** prohibit people convicted of certain crimes or serving certain kinds of sentences from eligibility. Some states require that a person meet minimum time-served criteria that are unrelated to the grounds for release.

- For example, **Indiana's Temporary Leave: Terminal Illness** program does not consider release of a dying person unless the individual is already within seven-and-a-half years of their early release date. Such restrictions are unnecessary and overbroad.
- Some categorical exclusions aim to **protect the community**, but they routinely prohibit consideration even of people whose medical conditions leave them unable to commit another crime or pose a threat of harm. Rather than exclude classes of people, well-designed programs assess the risk of present threat by building a public safety screen into the assessment and decision-making processes. The best programs arm the decision-maker with the information, standards, and discretion needed to make informed judgments.

### **Categorically prohibiting classes of people from consideration defeats the humanitarian purposes and fiscal benefits of compassionate release.**

- Other exclusions, for example those that forbid consideration of people convicted of sex offenses, likely exist to meet **retributive objectives**. Criminal legal systems recognize retribution as a purpose of punishment and factor it in at sentencing. Compassionate release addresses circumstances that have developed since sentencing. Famm believes authorities should revisit an individual's incarceration when the person becomes seriously or terminally ill to determine whether continued imprisonment still meets the purposes of punishment. A judge may have imposed a term of years to account for the seriousness of the crime, but the sentence may no longer fit the person who is serving it under conditions that include physical or mental suffering that was not intended as part of the punishment.
- Categorically prohibiting classes of people from consideration defeats the humanitarian purposes and fiscal benefits of compassionate release. Individualized consideration is the best way to ensure that the system releases those whose continued incarceration is inhumane.
- A handful of programs that provide end-of-life compassionate release have unduly lengthy assessment stages; the assessments themselves take longer than the amount of time dying people have left to live. The imprecise nature of prognostication in terminal cases compounds that problem. Our report cards awarded **extra credit** to systems that do not require a prognosis of time left to live for terminally ill people and to those that provide time frames sufficiently long to enable that assessment and decision-making can take place before the incarcerated individual dies.



## The Illinois Medical Release program earned top marks across the board for eligibility criteria.

They are clearly set out, straightforward, and generous. For example, the program provides compassionate release eligibility to people who are medically incapacitated and unable to complete more than one activity of daily living without assistance. Illinois extends eligibility to people with dementia and other cognitive disabilities, which is not common. Illinois uses an 18-month prognosis for people who are terminally ill, which is generous by national standards, and provides enough time to complete steps in the process. Finally, Illinois does not exclude anyone from consideration.



## Category

### Engaging the Process

15 possible points

- 5 Clinical and other staff can identify potentially eligible individuals and initiate the process.
- 5 Incarcerated people, their loved ones, and advocates can initiate the process.
- 5 Corrections staff have an affirmative duty to identify incarcerated people eligible for compassionate release and take the steps necessary to begin the process.

The first stage in the compassionate release process is finding the people whom the law deems eligible and beginning their assessment. Too many programs do too little to ensure people suited for compassionate release get to take that first essential step.

### Elements

- Corrections systems should allow staff and officials to play an active role in the compassionate release application process. They should train staff, especially medical staff, and corrections officials to **identify people in their care** who may be eligible. Corrections staff members can help ensure the person's application or referral is made. They can do that by encouraging the incarcerated person to apply, helping them apply, or initiating the process on the individual's behalf if necessary.
- We found that initiating compassionate release takes different forms. Some states permit only corrections staff to initiate compassionate release but do not require they do so. States that allow others, including the incarcerated person and the person's loved ones or counsel, to begin applying for compassionate release can fill that gap. They can help ensure that an eligible but overlooked individual does not fall through the cracks.
- The best programs are those that require clinical and other staff members who care for medically vulnerable or aging incarcerated people to assess them routinely for eligibility. They identify those who are potentially eligible and take the steps necessary to start the process.
  - For example, the **Alabama Medical Parole** program requires that the Department of Corrections certify and then refer potentially eligible people to the Parole Board, which has a "standing request" for such referrals. In addition, the Department must annually identify to the Board all individuals meeting certain other criteria that may qualify them for Medical Parole.



## Category

### Agency Policy Design

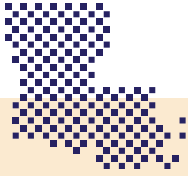
15 possible points

- 5 Agency rules exist for all stages of identification, initiation, assessment, and decision-making.
- 5 Agency rules are consistent with and/or complement the statute, are up to date, and are internally consistent.
- 5 Rules provide clear guidance to reviewers and decision-makers about steps to take and standards to apply.

Rules can make or break well-intentioned programs. Compassionate release laws usually describe criteria and identify who makes the decision whether to release an incarcerated person. Sometimes statutes also define other things such as procedures, deadlines, revocation grounds, and data collecting and reporting requirements. The best compassionate release laws direct agencies to write regulations, policies, and/or rules that ensure faithful implementation. Those regulations guide staff and officials in their duties. They must be clear and complete so that the people doing the compassionate release work know what is expected of them and are not left to guess at their jobs.

### Elements

- In most cases, more than one agency carries out compassionate release duties. For example, the corrections agency identifies, assesses, and refers people for consideration to a parole board, which in turn uses its own rules to determine whether to release the individual. At a minimum, **every agency that implements compassionate release should have guiding policy**. In some programs, one agency has policy covering its jobs, but the other does not or has incomplete or inconsistent rules. In other states, we could not locate any agency guidance.
- It should go without saying that agency guidance should be **complete, internally consistent, and up to date**. Many programs met that standard, but FAMM's review found some whose policies, guidance, or procedures are incomplete, internally incoherent, or out of date. Some states even have rules that contradict the statute's requirements.
- FAMM considers it essential that the rules assign **tasks** to agency actors, outline the **steps** they are to take, and give them **standards** to use. Doing so helps the people responsible for ensuring an eligible individual is identified, evaluated, and considered for compassionate release understand what is expected of them. Decision-makers also benefit from clear guardrails that ensure the release decision is made using program criteria rather than personal opinion.



## Louisiana's Compassionate Release program received top grades for policy design.

It has rules for all stages of the process designed to faithfully implement the statutory authority and provide clear guidance about steps to take and standards to apply for everyone engaged in the assessment and decision-making processes.



## Category

### Procedures

10 possible points

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

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.

Many of the people compassionate release laws are intended to help are medically fragile and/or nearing the end of their lives. In such cases, time is of the essence. But too many states have onerous review procedures. For example, compassionate release considerations can be freighted with multiple diagnoses, redundant and multilevel assessments, and burdensome documentation requirements.

### Elements

- Assessments that must clear multiple reviews slow down the evaluation and decision-making stages. The best compassionate release programs do not litter the path from initial application to the final decision with unnecessary steps and redundant reviews. Gathering multiple diagnoses or requiring many layers of review eats up precious time and does little to add value to the process. Procedures should **identify the minimum number of essential personnel** or positions that must review an applicant.
  - **Kansas' Functional Incapacitation Release** is weighed down by multiple, redundant assessments and reviews, some of which appear to have no standards to guide them whatsoever. Receipt of an application triggers an "informal" review, which involves multiple "consultations" at no fewer than seven different stages. Once complete, and assuming the application clears those hurdles, the assessment and referral process begins in earnest. The assessment process involves stops at a minimum of seven different staff members or officials up the lengthy chain.
- Procedures should lay out clear time frames for completing steps. While some states put time limits on these procedures, most do not. Delays prolong suffering needlessly and frustrate program goals. **Every stage in the process should have a deadline.** The deadlines should be generous enough to ensure the assessment is supported but short enough to keep the application moving along to a final decision.
  - **Idaho's Medical Parole program** includes procedures that are clear and have time frames. Every task is assigned to an office or individual and the deadlines are short enough to ensure the process moves forward at a good pace.
- FAMM awarded **extra credit** to those programs designed to release the terminally ill that include **expedited time frames** for end-of-life applicants to ensure that release decisions are made before they die.

## Category

### Release Planning Support

10 possible points

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 Release planning begins early in the process.

People leaving prison who are elderly, suffering from chronic or debilitating conditions, or terminally ill often require help to secure medical care, housing, income support, and other things that will ensure that they are safe and cared for in the community.

### Elements

- Too many programs put the onus of release planning on the incarcerated individual seeking compassionate release. Finding appropriate housing or long-term nursing care without help can be challenging for anyone who is very ill or nearing the end of life. Incarceration poses multiple barriers to people who are seeking release because they are aging, debilitated, or dying. A well-constructed release plan provides the building blocks of safe reentry. It also can help to reassure the decision-maker that the individual will be cared for humanely and will not pose a concern to the community. **Compassionate release programs should include a release plan** component and oblige skilled staff to prepare or help prepare the plan.
- Caseworkers or social workers in some states are tasked with **beginning release planning as soon as an individual is identified** as potentially able to be freed. FAMM believes programs should emulate that best practice. Some programs begin the discharge planning process so late that release must be delayed so that housing and funding can be secured.
- We provided **extra credit** to those programs that reach out to federal and state agencies responsible for income, medical care, and housing assistance to ensure that **public benefits and other supports are identified and applied for in advance** of the individual's release.
  - FAMM was impressed by the thoroughness of release planning in **Minnesota's Conditional Medical Release** program. It starts early, includes the incarcerated individual if the person is able to participate, and involves staff in making sure the individual has a safe placement that meets medical and housing needs as well as financial support to pay for the care. That includes applying for public assistance prior to release.



## Category

### Data Collection and Public Reporting 10 possible points

- 5 Agencies are obliged to gather, compile, and report release data to legislature.
- 5 Reporting is made available to the public via annual reports or other means.

Transparency is critical to ensuring a compassionate release program works as intended. Knowing how many people apply for release, are denied or granted, and why helps lawmakers assess whether the program meets lawmakers' objectives. Transparency also gives the public the information it requires to hold programs accountable.

### Elements

- We believe every program should include **comprehensive reporting to lawmakers**. Reports should, at a minimum, include numbers of people who may be eligible or who have applied; how many are denied and at what stage of the process and why; how many are granted and why; and how many of those are released.
- We also believe that agencies should provide that information to the public as well as lawmakers. Unfortunately, very few programs do so.
  - The **Massachusetts 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.



## Category

### Right to Counsel and Appeals

10 possible points

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

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

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 their prognosis.

It is unfair and unrealistic to leave an individual who is ill, dying, or otherwise challenged to engage in compassionate release proceedings on their own or to rely on agency personnel to advance the best arguments on their behalf. This category covers the right to counsel and other due process features that FAMM considers essential to a well-designed compassionate release program.

### Elements

- A handful of states permit or provide for **legal counsel** for people seeking or being considered for compassionate release. We believe it is imperative that people being considered for compassionate release have access to counsel at every stage. It is difficult to represent oneself in administrative or legal proceedings under the best of circumstances. Providing counsel will advance the system's interests by presenting well-briefed and researched arguments for consideration, ensuring that the ultimate decision-maker has the necessary information.
- We awarded **extra credit** to the handful of programs that **provide counsel** to financially qualified applicants.
  - Very early in the process, **New Jersey's Compassionate Release** program affords counsel to people potentially eligible for Compassionate Release. As soon as an initial medical diagnosis determines the incarcerated person has a grave medical condition, the Department of Corrections must notify the individual's legal counsel or, if the person does not have an attorney, the Public Defender to initiate the Petition for Compassionate Release process.

- People who are denied compassionate release by the ultimate decision-maker should have the **right to appeal** that denial to a neutral reviewer, such as the court, or in judicial proceedings to an appellate court. Courts can review denials for procedural flaws or for a decision-maker's abuse of discretion. We believe, given how few people are released, a second set of eyes on a failed applicant could very well yield better outcomes in individual cases and contribute to the development of a more robust compassionate release practice by helping normalize early release. Systems should also provide for administrative reviews of decisions to deny or not refer applicants.
- States should always include rules that ensure people denied release **are reconsidered or able to reapply** should conditions change. Ideally, programs should not impose a waiting period before reconsidering someone.
- We gave **extra credit** to those states that **routinely reassess** an individual denied compassionate release to determine whether the person's medical condition has deteriorated such that a renewed look may be warranted.
  - **Vermont** is among the few states that mandate regular reassessments of individuals denied Medical Parole. The facility's health services staff is to notify the Director of Nursing for the Department of Corrections of any change in an individual's condition that would warrant a review. In addition, the Director of Nursing must review all denied applicants every six months to determine if their conditions change such that they become eligible for Medical Parole.
- We also awarded **extra credit** to programs that do not revoke release and return people to prison simply because their condition improves, they go into remission, or they outlive their prognosis.

# State Compassionate Release

## The National Picture

Grades: ■ A ■ B ■ C ■ D ■ F

**F**  
59/100

AK

**F**  
13/100

ME

**D-**  
62/100

VT

**F**  
39/100

NH

**F**  
41/100

WA

**D**  
65/100

ID

**F**  
55/100

MT

**F**  
33/100

ND

**B-**  
82/100

MN

**F**  
52/100

WI

**F**  
36/100

MI

**D+**  
69/100

NY

**F**  
33/100

CT

**A**  
96/100

RI

**A-**  
90/100

MA

**F**  
22/100

OR

**F**  
47/100

NV

**F**  
42/100

WY

**F**  
51/100

SD

**F**  
0/100

IA

**A**  
94/100

IL

**F**  
41/100

IN

**F**  
37/100

OH

**F**  
41/100

PA

**C+**  
78/100

NJ

**F**  
19/100

DE

**D-**  
63/100

CA

**F**  
25/100

UT

**A+**  
100/100

CO

**F**  
28/100

NE

**F**  
22/100

MO

**F**  
38/100

KY

**F**  
32/100

WV

**F**  
45/100

VA

**A-**  
90/100

DC

**F**  
16/100

MD

**F**  
20/100

AZ

**D+**  
69/100

NM

**F**  
44/100

KS

**F**  
33/100

AR

**F**  
31/100

MS

**F**  
36/100

TN

**C-**  
72/100

NC

**D**  
67/100

OK

**D**  
64/100

LA

**D+**  
68/100

AL

**F**  
28/100

GA

**F**  
55/100

SC

**F**  
47/100

HI

**D-**  
62/100

TX

**F**  
35/100

FL



## Conclusion

This report opened with the story of Donald Brown. He and his family faced enormous obstacles, which tragically delayed and nearly derailed his release. Many states include similar or additional barriers that delay or deny compassionate release to deserving incarcerated individuals. FAMM identified many of those barriers in our report in 2018 and were dismayed, though not surprised, that most remain firmly in place today.

Mr. Brown's story is not unique. It should be. Given the commitment of lawmakers in 49 states and the District of Columbia to authorize and fund compassionate release programs, the agencies responsible for compassionate release should use them routinely. And if the programs are broken and can't be used effectively, the lawmakers should fix them.

The report cards grade every state program on elements FAMM considers essential to a well-functioning program. We hope the report cards spur discussion, concern, and – in failed states – outrage and action.

We are here to help.



**To learn more about compassionate release in the states:**

[famm.org/our-work/compassionate-release/everywhere-and-nowhere/  
#memos](https://famm.org/our-work/compassionate-release/everywhere-and-nowhere/#memos)



**To learn more about how to build a better compassionate release program:**

[famm.org/wp-content/uploads/compassionate-release-toolkit.pdf](https://famm.org/wp-content/uploads/compassionate-release-toolkit.pdf)



**To read the state report cards:**

[famm.org/our-work/compassionate-release/everywhere-and-nowhere](https://famm.org/our-work/compassionate-release/everywhere-and-nowhere)