

# Indiana

Overall Grade for Indiana

Total Grade

**41** /100

Letter Grade

**F**

Program Grades

	Total Grade	Letter Grade
<b>Special Medical Clemency</b>	<b>54/100</b>	<b>F</b>
<b>Temporary Leave: Terminal Illness</b>	<b>28/100</b>	<b>F</b>

# Special Medical Clemency

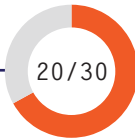
Total Grade

54 /100

Letter Grade

F

## Eligibility Criteria



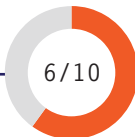
**5/10** Clearly set out with understandable and measurable standards.

**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. **0**

## Procedures

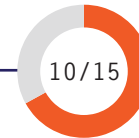


**5/5** Documentation and assessment are straightforward, lacking multiple or redundant reviews and authorizations.

**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. **+1**

## Engaging the Process

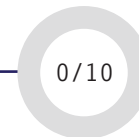


**5/5** Clinical and other staff can identify potentially eligible individuals and initiate the process.

**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

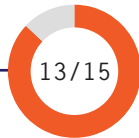


**0/5** Agencies provide comprehensive release planning.

**× 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



**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.

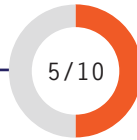
**3/5** Rules provide clear guidance to reviewers and decision-makers about steps to take and standards to apply.

## 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.



## 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

There is no publicly available information on how many Special Medical Clemency petitions the Governor granted in 2019 and 2020. In response to FAMM’s request for information, the Department of Corrections directed us to the Parole Board. The Parole Board did not respond to our request.

## High and Low Marks

### HIGH MARKS

- Indiana’s Special Medical Clemency does not exclude anyone from participating in the program due to the nature of their conviction or sentence.
- **Agency policy design** earned the program relatively strong marks because rules regarding the Department of Correction’s role are clearly laid out, are consistent with the law, and provide ample guidance. The program would have scored top marks in this category except that the Warden’s decision to deny an application does not appear to be informed by standards, and it is not clear whether an individual can appeal the Warden’s denial.
- The Parole Board considering whether to recommend a Special Medical Clemency petition to the Governor may waive its usual full investigation into community and victims’ attitudes and opinions, a process that can take as many as four months, if the Board determines time to be of the essence. FAMM awarded a bit of **extra credit** for that provision. No deadlines govern other tasks related to the petition.
- The program permits individuals denied release the **opportunity to reapply** if there is a substantial and documented change or should a new and serious medical condition arise.

### LOW MARKS

- The program earned only half grades for clarity and generosity of **eligibility criteria**, based on the vagueness of the medical condition criteria. A person is not eligible unless suffering from a condition that can be more effectively treated in another type of facility in the community and that makes it unlikely that the individual will be involved in further criminal activity. FAMM expects that standard is difficult to measure and unlikely to lead to many referrals.
- The program failed **release planning** because it does not appear that Department staff has assigned roles, besides – if necessary – confirming the proposed housing placement is appropriate. We could find no mention that the Department helps identify or meet other post-release needs, such as medical insurance, public assistance, or income support.
- No obligation to track and report Special Medical Clemency decisions earned the program a zero for **data collection and public reporting**.

# Temporary Leave: Terminal Illness

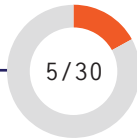
Total Grade

28 /100

Letter Grade

F

## Eligibility Criteria



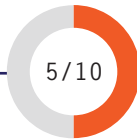
**3/10** Clearly set out with understandable and measurable standards.

**0/10 UTD\*** Generous or not unduly restrictive.

**2/10** 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

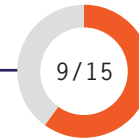


**5/5** Documentation and assessment are straightforward, lacking multiple or redundant reviews and authorizations.

**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

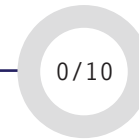


**5/5** Clinical and other staff can identify potentially eligible individuals and initiate the process.

**4/5** 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

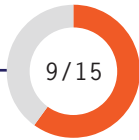


**0/5 UTD** Agencies provide comprehensive release planning.

× **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

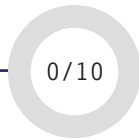


**2/5** Agency rules exist for all stages of identification, initiation, assessment, and decision-making.

**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



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

✘ **Extra credit:** Denials are appealable. **0**

**0/5 UTD** 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**

\* 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.

\*\* Temporary Leave: Terminal Illness is a program that Department of Correction rules entirely govern, and thus FAMM cannot evaluate the policy for its consistency with an authorizing statute.

## The Numbers

The Department of Corrections is not required to report data about individuals released on Temporary Leave: Terminal Illness, and its annual reports for 2019 and 2020 do not include that information.

## High and Low Marks

### HIGH MARK

- Indiana's Temporary Leave: Terminal Illness earned marks for **engaging the process**, because incarcerated people, their families, or facility staff can complete and submit the form required to make a request for leave. FAMM deducted one point because the form is not publicly available, and it is not clear how families can access it.

### LOW MARKS

- **Overall**, the program received **failing grades** across the board.
- **Eligibility criteria:** The Department of Correction generally limits Temporary Leave to five days but waives that time frame for people who are terminally ill. Department policy does not define "terminal illness" or provide any examples to guide evaluators. Many people are excluded from the program due to the nature of their conviction. Moreover, an incarcerated person whose minimum release date is more than 7.5 years away is ineligible. By design, many such people will be very unlikely to survive until they are eligible.
- The program flunked **policy design** because few rules exist to guide those who initiate, evaluate, or make decisions about requests for Temporary Leave: Terminal Illness. For example, the facility Supervisor of Classification can recommend denial of the application if the individual does not meet Temporary Leave criteria, but agency policy does not provide any information about what the Supervisor examines to make that determination. Similarly, the Warden, who is the final decision-maker, has a set of considerations but no standards to follow in deciding whether to grant Temporary Leave.
- FAMM could not locate information about **release planning support**. Individuals facing the end of life generally need assistance with planning for end-of-life care, housing, and income support. If they are incarcerated, failing to secure assistance with those tasks can doom their prospect of release. FAMM believes every compassionate release program must build release planning support into the process and ensure it starts as soon as possible.
- FAMM could not find any information about **appeal** or **reapplication** rights of individuals who are denied Temporary Leave. The program earned zeros in both categories.