

Kansas

Overall Grade for Kansas

Total Grade

44
/100

Letter Grade

F

Program Grades

	Total Grade	Letter Grade
Functional Incapacitation Release	53/100	F
Sentence Modification Due to Illness or Infirmary	34/100	F

Functional Incapacitation Release

Total Grade

53 /100

Letter Grade

F

Eligibility Criteria

11/30

4/10 Clearly set out with understandable and measurable standards.

3/10 Generous or not unduly restrictive.

4/10 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

10/15

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

10/10

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. **0**

5/5 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.

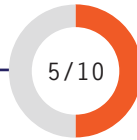
2/5 Rules provide clear guidance to reviewers and decision-makers about steps to take and standards to apply.

Data Collection and Public Reporting

5/10

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.



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

Given the procedural barriers FAMM found, it is no wonder that the Prisoner Review Board considered no applicants in 2019 and only one in 2020, according to the Department of Correction's annual report, which does not report on whether it granted that applicant Functional Incapacitation Release.

High and Low Marks

HIGH MARKS

- Kansas' Functional Incapacitation Release program has detailed, even exhaustive, rules for the entities to follow when implementing the program. Those include defined steps, assigned roles, and procedures. That led to relatively high marks for **policy design**.
- It appears that appropriate staff in the Department of Corrections collaborates with a parole officer concerning a **release plan** for people under release consideration. The plan must provide details about housing, medical services, and available funding. Discharge planning takes place early in the process. Prompt and thorough release planning is rare in state compassionate release programs, and FAMM applauds Kansas for providing it.
- While no **right to appeal** a final denial exists, a person whose application for Functional Incapacitation Release is denied at any point in the process may apply again. However, to warrant new consideration, the individual must address what has changed since the denial.

LOW MARKS

- **Eligibility criteria** are narrow and may be difficult to measure, requiring that an individual be so incapacitated as to lack the capacity to cause physical harm to another person. That standard is subjective and may result in few people considered if capacity to cause physical harm is broadly interpreted. The standard could benefit from definition.
- Functional Incapacitation Release received failing marks for its **procedures**. The program 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, beginning with a Unit Team Counselor and ending with the Chair of the Prisoner Review Board. FAMM could not find any standards explaining what those consultations involve. Once complete, and assuming the application clears those hurdles, the assessment and referral processes begin in earnest. The assessment process involves stops at a minimum of seven different staff members or officials up the lengthy chain. A denial at any point can end the process. If the Secretary of Corrections recommends the individual, the Prisoner Review Board then reviews the applicant for additional consideration and a final decision. No deadlines govern assessment, referral, and decision-making.

Terminal Medical Release

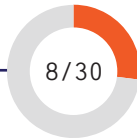
Total Grade

34 /100

Letter Grade

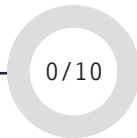
F

Eligibility Criteria



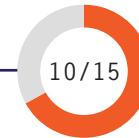
- 4/10** Clearly set out with understandable and measurable standards.
- 0/10** Generous or not unduly restrictive.
- 4/10** No categorical exclusions/everyone is eligible for consideration.
 - × **Extra credit:** Terminal illness time-left-to-live provisions are reasonable and sufficiently long to permit the completion of the review and decision-making processes. **0**

Procedures



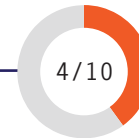
- 0/5** Documentation and assessment are straightforward, lacking multiple or redundant reviews and authorizations.
- 0/5** Time frames for completing review and/or decision-making exist and are designed to keep the process moving along.
 - × **Extra credit:** Expedited time frames exist for terminal cases. **0**

Engaging the Process



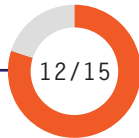
- 5/5** Clinical and other staff can identify potentially eligible individuals and initiate the process.
- 5/5** Incarcerated people, their loved ones, and advocates can initiate the process.
- 0/5** Corrections staff have an affirmative duty to identify incarcerated people eligible for compassionate release and take the steps necessary to begin the process.

Release Planning Support



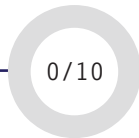
- 2/5** Agencies provide comprehensive release planning.
 - × **Extra credit:** Release planning includes helping the incarcerated person apply for benefits prior to release, including housing, Medicaid, Medicare, and/or veterans benefits. **0**
- 2/5** Release planning begins early in the process.

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.
- 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 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**

The Numbers

Kansas does not report Terminal Medical Release statistics and did not respond to FAMM's inquiries. Given the procedural barriers described below, combined with the scant period of time an individual has left to live, it is no wonder that only one person, according to a news report, received Terminal Medical Release between 2013 and 2019.

High and Low Marks

HIGH MARKS

- The Kansas Terminal Medical Release program has detailed, even exhaustive, rules for entities to follow when implementing Medical Terminal Release. Those include defined steps, assigned roles, and procedures. That earned the program relatively high marks for **policy design**. The program also provides some time-saving aspects to the assessment and decision-making steps. That would be commendable if the eligibility requirement – a person is eligible only if within 30 days of death – combined with the multistep, redundant preassessment consultations and assessment process were not so limited. Any time saved by cutting out victim notification and letting the Chair of the Prisoner Review Board, rather than the full Board, make the final decision can have no impact on a process that must take weeks or even months to roll out.
- FAMM awarded the program partial marks for **release planning support** given that the Unit Team at the institution consults with the Institutional Parole Officer about a release plan.

LOW MARKS

- **Eligibility criteria** for Terminal Medical Release is absurdly short.

To be eligible for consideration, **an individual must be within 30 days of death**. Even the most efficient program would have trouble identifying and processing people in such a short time frame. Kansas' program is anything but efficient.

- The program received failing marks for its **procedures**. The program 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, beginning with a Unit Team Counselor and ending with the Chair of the Prisoner Review Board. FAMM could not find any standards covering those consultations. Once complete, and assuming the application clears those hurdles, the assessment and referral processes begin in earnest. The assessment process involves stops at a minimum of seven different staff members or

officials up the lengthy chain. A denial at any point can end the process. If the Secretary of Corrections recommends the individual, the Prisoner Review Board then reviews the applicant for additional consideration and a final decision. There is no way an individual within 30 days of death can hope to see the application make it through so many layers to a final decision. No deadlines govern assessment, referral, and decision-making. The program waives the initial victim notification requirement and directs the Chair of the Prisoner Review Board to make the final release decision, rather than sending the application to the Board at large. FAMM would ordinarily commend those two efficiency measures but cannot in light of the program's extensive, multilayered, lengthy review that applicants must go through.

- To FAMM's knowledge, dying individuals denied Terminal Medical Release do not have the **right to appeal** or reapply.