



Compassionate Release Report Card • October 2022

# Montana

Overall Grade for Montana

Total Grade

**55** /100

Letter Grade

**F**

Program Grades

**Medical Parole**

Total Grade

**55/100**

Letter Grade

**F**

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[famm.org](https://www.famm.org)



# Medical Parole

Total Grade

**55** /100

Letter Grade

**F**

## Eligibility Criteria

17/30

**7/10** Clearly set out with understandable and measurable standards.

**3/10** Generous or not unduly restrictive.

**7/10** 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

5/10

**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

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

5/10

**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**

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

## Agency Policy Design

13/15

**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.

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

## Data Collection and Public Reporting

0/10

**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.

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

The Montana Board of Pardons and Parole advised FAMM that it granted one Medical Parole request in 2019 and denied three. In 2020, the Board granted four requests and denied six.

## High and Low Marks

### HIGH MARKS

- Montana's Medical Parole program permits a variety of people to **begin the process**, including the incarcerated person or a family member, as well as Department of Corrections staff or the Board of Pardons and Parole.
- The program earned high grades for **policy design**. Rules exist for implementing the Medical Parole law, and they assign roles to actors in the Department and Board. The rules provide steps to follow and, for the most part, guidance about standards to apply. The rules are quite thorough and detailed. FAMM marked policy design down a bit because we could not find standards guiding intermediate decision-makers, such as the Department's Clinical Services Division, about how to recommend whether to accept an application.
- While there are many steps in the Medical Parole process, the guidance on **procedures** for gathering documentation and assessing the applicant appears straightforward.

### LOW MARKS

- **Eligibility criteria** for Montana's Medical Parole are vague and stingy. To be considered eligible at the end of life, a person must be within six months of death, which is a very short time frame in general and especially in light of the many steps in the documentation and decision-making processes. Otherwise, an applicant has to prove a need for "extensive medical treatment," but the program does not define that term. While only a few classes of people are barred from Medical Parole, people whose sentencing judge designated them as ineligible for parole must secure the court's approval before they can apply for Medical Parole.
- Montana's Medical Parole **procedures** include considerations by a number of different staff and officials along the way. The program's procedures do not include time frames within which to complete their work.
- Medical Parole fails **release planning**. The program requires the applicant to identify a possible placement, how the individual will reach the placement, and how the person will finance care. Given that incarcerated people have limited access to the outside world and they are also near the end of life or need extensive medical attention, the program should provide them skilled help with release planning, such as, for example, contacting outside agencies and nursing facilities.