



# North Dakota

Overall Grade for  
North Dakota

Total Grade

**33**  
/100

Letter Grade

**F**

Program Grades

**Medical Parole**

Total Grade

**33/100**

Letter Grade

**F**

# Medical Parole

Total Grade

**33** /100

Letter Grade

**F**

## Eligibility Criteria

18/30

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

**3/10** 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

5/10

**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

2/15

**2/5** Clinical and other staff can identify potentially eligible individuals and initiate the process.

**0/5** 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

3/15

**3/5** 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

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

**5/5** 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

The Parole Board did not respond to FAMM's request for Medical Parole data for 2019 and 2020.

## High and Low Marks

### HIGH MARKS

- Medical Parole is open to everyone; there are no **categorical exclusions**.
- **Counsel** may represent individuals whom the Parole Board is considering for Parole, including presumably Medical Parole.

### LOW MARKS

- While Medical Parole **eligibility criteria** include fairly specific guidance to help evaluate whether a person meets the "serious medical condition" prong, including specific examples, the criteria for terminal illness are unclear. A person's death must be "likely and imminent," but the program does not define either term. The "likely and imminent" standard for terminal illness is among the most restrictive criterion for terminal compassionate release programs FAMM has encountered. We were also concerned that "imminent" is not defined and may cause delays in processing applications of terminally ill people until it is too late. Moreover, the serious medical condition criterion includes ungenerous standards, such as that the condition requires high-risk or highly complex intervention of intensive, high-needs, or specialized care. Those standards do not have definitions, likely making them challenging to apply.
- **Engaging the process:** While the Parole Board rules permit only the Department of Corrections and Rehabilitation's medical provider to initiate Medical Parole consideration, nothing indicates how or whether an incarcerated individual or someone on their behalf can request consideration.
- The statute authorizing Medical Parole comprises one paragraph, and **agency policies and procedures** are equally scant. Medical Parole barely gets a mention in Department policy, and we were unable to determine much if anything about what guidance agency staff and officials follow in implementing the various stages of Medical Parole, including how the medical provider is to identify people eligible for Medical Parole and begin the referral process.

**LOW MARKS (CONTINUED)**

- FAIMM found no mention whatsoever of discharge, parole, or **release planning** in the policy governing parole generally or in the section on Medical Parole specifically.
- We suspect the lack of policy means few if any people secure Medical Parole, but we cannot tell for sure because the Parole Board does not need to **collect data** or **report** numbers to anyone and does not include Medical Parole numbers in its reports to the public.