

Compassionate Release Report Card • October 2022

South Dakota

Overall Grade for
South Dakota

Total Grade

51 /100

Letter Grade

F

Program Grades

	Total Grade	Letter Grade
Compassionate Parole	66/100	D
Extension of Confinement	35/100	F

Find all compassionate release resources on FAMM's site →

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



Compassionate Parole

Total Grade

66 /100

Letter Grade

D

Eligibility Criteria

28/30

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

5/10 Generous or not unduly restrictive.

8/10 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. **+10**

Procedures

6/10

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

1/5 Time frames for completing review and/or decision-making exist and are designed to keep the process moving along.

x Extra credit: Expedited time frames exist for terminal cases. **0**

Engaging the Process

5/15

5/5 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

5/10

0/5 UTD* Agencies provide comprehensive release planning.

x 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

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.

10/10

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. **+5**

* 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.

The Numbers

In response to FAMM's request, the Department of Corrections stated:

2019 The Department did not refer any individuals to the Board of Pardons and Paroles for Compassionate Parole.

2020 The Department referred three individuals for Compassionate Parole, all of whom received it.

High and Low Marks

HIGH MARKS

- The **eligibility criteria** grade benefits from **extra credit** because terminally ill people do not need to have a prognosis of time left to live to qualify under the terminal prong. In addition, most people are eligible for Compassionate Parole, with the exception of those sentenced to death.
- **Policy design** is thorough, is consistent with the law, and provides guidance to actors about steps to follow. Compassionate Parole did not earn a perfect grade for this category because key eligibility terms lack definition. Consequently, reviewers and decision-makers may not understand what standards to apply and may insert their own judgments.
- People denied Compassionate Parole may not **appeal**, but the Board of Pardons and Paroles will hear those individuals again no later than one year from the decision date. The Board can move that hearing up should medical conditions warrant. South Dakota is unique in this feature; very few states include calendared rehearings.
- **Revocation:** South Dakota does not return a person to prison from Compassionate Parole if the medical condition improves.

LOW MARKS

- South Dakota's high grade for Compassionate Parole **eligibility criteria** is somewhat deceptive. While a number of different medical issues or age concerns trigger eligibility, limitations exist that likely depress referrals to the program. First, terms for key criteria, such as "seriously ill" and "extensive" in "requiring extensive medical care" prongs, are not defined. Meanwhile, the age-plus-time-served-plus-medical-care criteria require that the incarcerated individual's care cost at least twice as much as the national average for medical costs, which seems unduly prohibitive. In addition, FAMM expects the cost comparisons must be quite difficult to calculate.
- Only wardens may **initiate the Compassionate Parole process**, though health care providers can make a referral to the Warden.
- Compassionate Parole applicants require a release plan and must ensure that they or a third-party payer such as Medicare, Medicaid, Indian Health Service, etc., will pay health care expenses. That information must be included in the referral to the Warden. FAMM could not determine whether the Department of Corrections plays any role in **release planning**.
- South Dakota Compassionate Parole law does not include **reporting requirements**.

Extension of Confinement

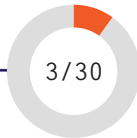
Total Grade

35 /100

Letter Grade

F

Eligibility Criteria



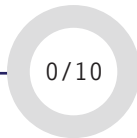
3/10 Clearly set out with understandable and measurable standards.

0/10 Generous or not unduly restrictive.

0/10 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

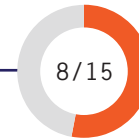


0/5 UTD* Documentation and assessment are straightforward, lacking multiple or redundant reviews and authorizations.

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

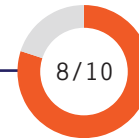


5/5 Clinical and other staff can identify potentially eligible individuals and initiate the process.

0/5 Incarcerated people, their loved ones, and advocates can initiate the process.

3/5 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

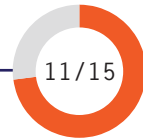


3/5 Agencies provide comprehensive release planning.

× **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

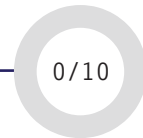


5/5 Agency rules exist for all stages of identification, initiation, assessment, and decision-making.

4/5 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.

Right to Counsel and Appeals

5/10

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. **+5**

The Numbers

No reporting requirement exists. The Department of Corrections issues annual reports but does not explain how many of the individuals who received Extension of Confinement were released to address medical treatment and care needs in 2019 and 2020.

High and Low Marks

HIGH MARKS

- The Department of Corrections maintains a list of potentially eligible individuals, which it generates on a monthly basis. The list can help the Warden identify for whom to **initiate the process** for Extension of Confinement.
- Once the Warden has identified an individual as potentially eligible for Extension of Confinement, health and behavioral services staff develop a **release plan** for referral, necessary medical services, medications, and access to providers.
- The Extension of Confinement program does not require that individuals released under it be returned if their condition improves.

LOW MARKS

- **Overall**, South Dakota Extension of Confinement **flunks**. Although people with a diagnosed medical or mental health condition are eligible, FMM expects the program does not benefit them in light of the many design issues we found. We cannot tell for sure because the state does not report on who receives Extension of Confinement due to the need to receive medical treatment. Below, we discuss just a few of the standout failures.

* UTD stands for "Unable to Determine" and is graded zero. This is when there are no rules, guidelines, regulations, or other authority that FMM 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.

- Undefined terms, stingy provisions, and myriad categorical exclusions led us to give Extension of Confinement one of the lowest grades FAMM has awarded for **eligibility criteria**.
 - ▶ People diagnosed with a medical or mental health condition may be eligible. The program does not provide any more information about what kinds of conditions or other considerations identify eligibility.
 - ▶ People with medical or mental health conditions are eligible for Extension of Confinement only if they are in minimum custody, are within six months of their initial parole date, and promise to live in South Dakota and wear an ankle monitor. Numerous categorical exclusions mean only those serving time for a nonviolent offense are eligible. FAMM expects these restrictions confine eligibility to a small group of people.
- While the policy lays out some **procedures**, we could glean little about the standards the Department uses to screen an individual for the program.