

Everywhere and Nowhere

Compassionate Release in the States

By Mary Price

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FAMM





About the Author

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Dedication

We dedicate this report to the many people who have shared with us their struggles to help imprisoned loved ones secure compassionate release. Their perseverance and courage in the face of barriers, misinformation, indifference, and even hostility inspired us to write this report.

Acknowledgements



This report would not have been possible without the talented and creative contributions of Julie Clark. She brought her engaging writing style and great ideas for organization to editing it. She also researched and wrote the 51 memos (50 states plus the District of Columbia) on which it is based. Her dedication to uncovering every single compassionate release statute and rule, as well as her skill in breaking down very complex information into clear and easy to understand parts, have ensured that this work will be a resource to those who need it most.

The scholarship and advocacy of Dr. Brie Williams, professor of medicine at the University of California San Francisco, have elevated the issue of compassionate release in the medical community and beyond. Miriam Krinsky, founder and executive director of Fair and Just Prosecution, works with prosecutors to promote a justice system grounded in fairness, equity, compassion, and fiscal responsibility. We are grateful to both for their close read and thoughtful suggestions. We also thank the law firm of Crowell & Moring, which provided research assistance.

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Introduction



When prison officials finally allowed Lynn Atkinson to visit her brother after she hadn't seen him for quite a while, she was horrified. He was dying of cancer and had shrunk to about 90 pounds. "He was handcuffed to the bed and his legs were shackled," Lynn says. "I'll never forget it walking in there. I was just like, 'Oh my god, this is a horror show.' Where do they think he's going? He can't even walk."

Bernard "Bernie" Mulka was serving a sentence of 16 years in a Connecticut state prison for two bank robberies. He was 11 years into his sentence when he learned of his terminal diagnosis. Lynn heard from his nursing staff that he could be eligible for release, and she wanted to bring him home to die.

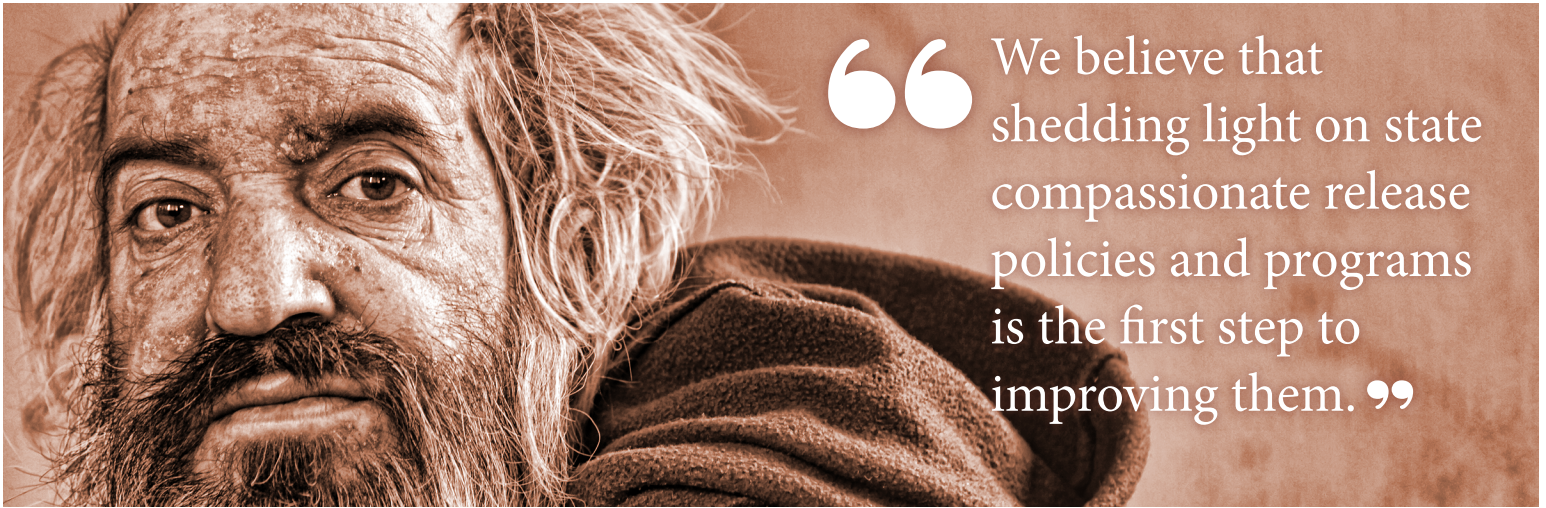
She wasn't aware of any official process, so she just started writing and calling, trying to get someone's attention. "I was writing letters to the governor, letter after letter. I can't tell you the letters I wrote, and nobody ever responded," Lynn says.

Luckily, one of her co-workers talked to her brother, a lawyer at Robinson & Cole. The firm took up Bernie's cause. In December of 2013, Bernie's lawyers made a formal request for his release. Lynn did what she could to help, while also trying to keep track of her brother's health. "I would call the prison to check on him, because by now he was really, really sick, unable to walk, and they'd

be like, 'You know what? We're busy.' Click. They would hang up on me." After he was transferred to the prison hospital, she was not allowed to visit him. In January 2014, the Connecticut Board of Pardons and Paroles officially denied Bernie's request for release.

The lawyers continued to try every avenue of possible legal relief. Eventually they obtained a court hearing. Everyone in the courtroom, including Lynn, fell silent as Bernie was rolled in. He could barely sit up in his wheelchair and could not even stay alert throughout the proceeding. The following day, Lynn was finally allowed to visit Bernie, and, a few days later, his attorneys called Lynn to tell her that Bernie would be released. Soon after, he died at his father's house, Lynn by his side. To this day, she is not sure by what process he was released.

Lynn is grateful that her brother made it home to die, but she hasn't been able to shake her anger about the process. "I am a pretty strong person, but this really almost broke me. People shouldn't have to go through this. It can really affect you when your family is dying in prison and there's nothing you can do. I think that's the worst feeling I've ever had, worse than anything else. He's going to die, he'll be dead in a few months anyway, so why can't he just come home? It's not just inhumane for the person who's in jail and experiencing it—but even more for the family. That's not right."



“ We believe that shedding light on state compassionate release policies and programs is the first step to improving them. ”

Why Compassionate Release?

Compassionate release allows prisoners facing imminent death, advancing age, or debilitating medical conditions to secure early release when those developments diminish the need for or morality of continued imprisonment. At FAMM, we routinely hear from prisoners and their loved ones seeking information about how to secure compassionate release. We have listened to heart-wrenching stories of families like Lynn and Bernie’s trying to help sick and dying prisoners navigate an absurdly complicated and confusing process for release. They do not understand how to ask for compassionate release or interpret eligibility criteria. They encounter walls of silence and endure lengthy delays. Most are turned down.

FAMM has worked for many years to bring attention and reform to this area of our justice system. With Human Rights Watch, we co-authored “The Answer Is No,” a comprehensive report in 2012 on the failings of the federal compassionate release system.¹ The following year, the U.S. Justice Department’s independent watchdog released a sharply critical report of the program.² These accounts and advocacy by FAMM and others led the Bureau of Prisons and the U.S. Sentencing Commission to promote reforms to the federal system.³ Bills pending in Congress as of June 2018 would make further improvements to federal compassionate release policies.⁴

This report

Now we want to bring attention and spur improvements to state compassionate release programs. Our review found that many are so complicated

and confusing that trying to navigate them can be overwhelming for the very people they ought to help. We often found ourselves struggling to make sense of incomplete, inconsistent, and at times even incoherent guidelines and rules. We can only imagine what it must be like for men and women in prison who are dying or living with serious medical conditions, or for their families trying to help from the outside.

We believe that shedding light on state compassionate release policies and programs is the first step to improving them.

This report and the 51 state memos accompanying it are our contribution to the people for whom compassionate release is designed. We set out to unpack and describe every state’s publicly available compassionate release rules so that prisoners and their supporters will have one place to visit where they can learn about eligibility criteria, application procedures, needed documentation, and decision-making steps. We hope that providing this material will empower people with accurate information and improve their chances of success.

We also hope that the light our work casts will help improve compassionate release programs. This report details a number of barriers to compassionate release. It also includes a section on best practices. We want this information to encourage policy advocates and state lawmakers to take a close look at compassionate release rules and improve their design, guidance, and ease of use. To that end, we close the report with a comprehensive set of recommendations.



FAMM's values

FAMM brings a set of beliefs to our review.

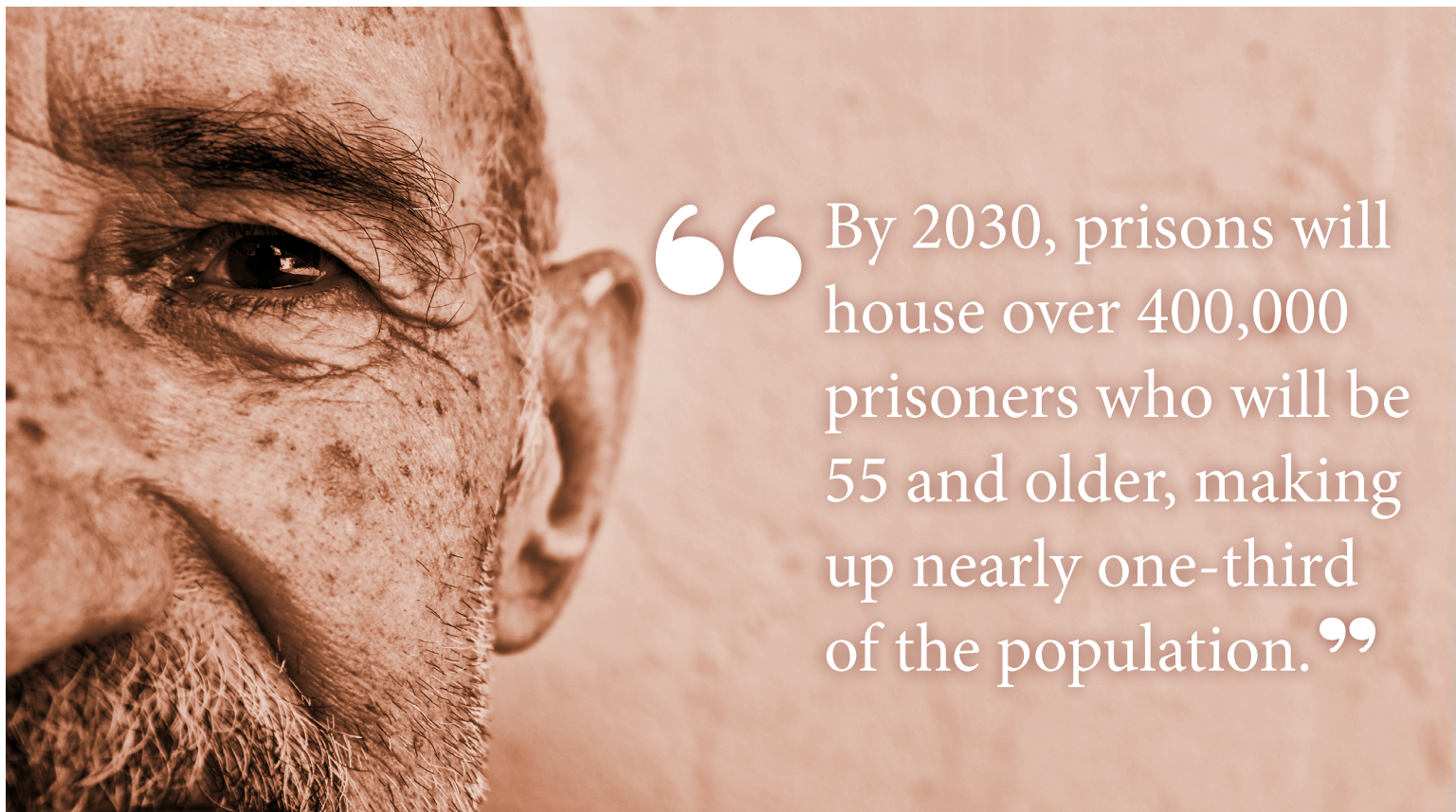
- Compassionate release rules should be easy to understand.
- Eligibility criteria should be informed by evidence.
- Every prisoner should be evaluated in a timely and fair manner and released when he or she meets the criteria.
- Every prisoner should be considered on his or her merits and not automatically excluded based on the crime committed or the amount of time left to serve.
- Help should be available to prisoners and their loved ones, if needed, to apply for compassionate release.
- Prisoners should be kept advised as the request is considered and assisted in preparing to leave prison with comprehensive release planning.
- Finally, compassionate release in every state should be transparent to the fullest extent possible. This means well-designed reporting requirements that ensure that lawmakers and the public know whether these programs are used as intended.

Another note of introduction: While the term “compassionate release” is used often in the literature about programs allowing early release or parole for prisoners who are, for example, seriously ill or elderly, readers of this report will find that very few states name the programs “compassionate release.” But we do.

FAMM was first introduced to compassionate release by prisoners and their families struggling to use it. They would write or call our office desperate for information. While researching and writing this report, we were struck time and again at the sheer complexity and bureaucratic barriers in most state programs. Some programs are carefully crafted to provide for a comprehensive review and a correct outcome. Others are written like an afterthought. But only a handful require that officials tell prisoners that compassionate release exists, much less how to apply for it. Just a few programs require that prisoners waiting for decisions be kept updated about where things stand. Most include procedures that result in lengthy delays while officials evaluate whether the prisoner meets unclear or confusing eligibility criteria or deserves to be released.

“Compassion” is defined as the sympathetic consciousness of others’ distress together with a desire to alleviate it. Every program we studied would benefit from taking a compassion-based look at what it means for a prisoner and his or her loved ones to go through the process in light of the barriers and complexity we found. Doing so could help ensure that programs are attentive to the needs and challenges faced by the individuals seeking to use them and that the application process itself does not inflict unnecessary distress or suffering.

We call these programs “compassionate release” so that the human experience is foremost in our minds and those of our readers.



“By 2030, prisons will house over 400,000 prisoners who will be 55 and older, making up nearly one-third of the population.”

States have compassionate release programs but rarely use them.

FAMM has long believed that compassionate release is necessary when a prisoner's condition changes so much that continued incarceration can no longer be justified in light of the purposes of punishment or the principles of human dignity. Compassionate release is called for when prisoners become terminally ill, elderly, or very sick or incapacitated and unable to care for themselves.

A broad and diverse group of organizations and individuals support compassionate release. They span the ideological spectrum and work in the areas of criminal justice, health care, human rights, law, and religion.⁵ The U.S. Congress adopted the federal compassionate release program in 1984 to give judges the authority to reduce a sentence for prisoners who develop “extraordinary and compelling circumstances,” such as the onset of terminal illness.⁶

States also provide for early release. We were gratified to learn that 49 states and the District of Columbia provide some means for prisoners to secure early

release when circumstances such as imminent death or significant illness lessen the need for, or morality of, their imprisonment. But we were dismayed to discover that despite the widespread existence of these programs, very few prisoners receive compassionate release. This is tragic, because the case for expanded compassionate release is so strong.

The need for compassionate release

A number of well-documented reasons support a robust use of early release. Among them is the cost of housing, accommodating, and providing medical care for aging prisoners, prisoners who are ill or suffering from a significant and limiting disability, and prisoners nearing the end of their lives. These prisoners present unique challenges to prison systems poorly equipped to meet them. As prisoners age or experience declining health, their threat to public safety lessens, as do some of the justifications for continuing to hold them behind bars.



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Graying of prisons

Mandatory prison sentences and truth-in-sentencing laws mean that more people are serving prison terms, and that those terms are longer and cannot easily be shortened.⁷ State prison populations increased 55 percent between 1993 and 2013.⁸ The proportion of prisoners 55 years old and older increased 400 percent in that same period.⁹ These older prisoners made up 11.3 percent of the state and federal prison population at the end of 2016,¹⁰ an increase of more than 8 percent from 2003.¹¹ While state prison populations are finally falling, the same cannot be said for their elderly populations.¹² By 2030 prisons will house more than 400,000 individuals who will be 55 and older, making up nearly one-third of the population.¹³

Cost of care

Elderly prisoners and those with complicated or age-related medical conditions are expensive to care for

and house. Estimates are that older prisoners cost between three to nine times more per prisoner to incarcerate than younger ones.¹⁴ From 1976 (when the Supreme Court ruled that prisoners must have access to an appropriate level of medical care) to 2013, prison spending increased 10 times, with medical-care spending making up fully 10 percent of the \$77 billion price tag that year.¹⁵ Experts relate that the rising cost of state prison health care is due largely to the growing population of older prisoners with disabilities and chronic medical conditions.¹⁶ Medical care alone consumed one fifth of state prison expenditures in 2015, and treating chronic conditions is a growing concern in light of the graying of state prison populations.¹⁷

Prisons face many challenges when trying to meet the special needs of older prisoners and those who are ill or have severe disabilities. This community requires targeted supports, such as

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MEDICAL PRISON CARE
SPENDING INCREASED

10X

FROM 1976 TO 2013



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on average.”**

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ramps, lower bunks, and grab bars.¹⁸ Many prisons are quite old, with aging and poorly designed buildings causing health and safety problems for prisoners.¹⁹ Some prisons aim to provide programming for older prisoners and assistance with self-care such as bathing, dressing, eating, and walking.²⁰ In some jurisdictions, fellow prisoners help those facing barriers getting to pill lines, medical appointments, meals, and even in and out of beds and wheelchairs.²¹

Prisoners nearing death present additional challenges, ranging from managing prisoners' pain to ensuring their final days are spent in relative physical, spiritual, and emotional peace. Some systems use prisoners as hospice aides for fellow prisoners facing the end of life.²² Families also suffer when a loved one in prison is suffering. In our experience, prisons do a poor job of providing families information about dying prisoners, much less frequent opportunities and time to visit with and support them in their final days.

Public safety

Caring for older prisoners and those with serious health conditions is expensive, and will likely become more expensive in the years to come. Leaving prison affords them access to community-based health care or end-of-life supports at a fraction of the cost incurred behind bars.²³ State criminal justice systems can use those savings to protect the public rather than spending criminal justice funds to warehouse elderly and dying men and women behind bars.

Prisoners who are older, those who are experiencing serious medical, cognitive, or mental health conditions, and those with terminal illnesses are not only among the most costly to care for; they are also the least likely to be rearrested or returned to prison.²⁴ A Department of Justice review of federal prisoners who received compassionate release found their recidivism rate to be 3.1 percent, a tiny number when compared with recidivism of full-term



prisoners.²⁵ A recent study of all federal prisoners released in 2005 who were followed for eight years found that nearly 50 percent were rearrested and 30 percent returned to prison.²⁶ According to the U.S. Sentencing Commission, as people grow older, their risk of committing crimes drops. An eight-year study found that 13.4 percent of prisoners who were 65 years old or older when released were rearrested, compared with 65.4 percent of those released prior to age 21,²⁷ and stated that “[o]lder offenders who do recidivate do so later in the follow-up period, do so less frequently, and had less serious recidivism offenses on average.”²⁸

The list of reasons for keeping men and women behind bars shortens as age and chronic or terminal conditions impose increasing physical limitations and emotional burdens on them. The classic rationales for imprisonment are punishment, rehabilitation, protection of the public, and deterrence. However, “[t]hese justifications may be substantially undermined for prisoners who are too ill or cognitively impaired to be

aware of punishment, too sick to participate in rehabilitation, or too functionally compromised to pose a risk to public safety.”²⁹

Prisons are not set up to allow for personal integrity for individuals nearing death or enduring extreme medical conditions. Even dying prisoners are shackled and frequently denied family bedside visits. Prisons are by nature and design poorly suited to address individual needs for familial contact, the settling and restoration of relationships, and the personal warmth and support that is taken for granted by people outside prison. Medical ethicists call this patient-centered care. Prisons cannot provide it.³⁰

We believe that prisoners facing death and those enduring chronic or debilitating conditions are entitled to the emotional, physical, and spiritual dignity that the non-incarcerated expect. Withholding those supports does nothing to advance public safety or meet the purposes of punishment.

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This Report:

What we did, what we found



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Our research

Given the strong case for compassionate release, we wanted to learn more about whether states were using such release programs. We launched an in-depth examination of compassionate release rules in all 50 states and the District of Columbia. Our research included an exhaustive review of legislation, agency regulations and policies, and to a lesser extent, handbooks, FAQs, statistical reports, and news accounts.

The fruits of this research can be found in the detailed memos on our website, www.famm.org. For each state, we attempted to answer the following questions:

- Who is eligible for early release due to illness or advanced age?
- How do individuals in prison or others acting for them apply?
- What documentation must be provided?
- Who decides whether to grant compassionate release and how?
- What happens after someone is released?
- Does the state keep records on the number of compassionate releases?

An overview of our findings

While the details of our research are in the individual state memos, here are some of our most significant findings.

We found that 49 states and the District of Columbia provide one or more forms of compassionate release. Only Iowa has no specific compassionate release law or regulation. Several other states, such

as Illinois and Michigan, technically have programs in place, but provide no detailed rules or guidance on implementing them.

We also learned that states use different methods with different names to carry out what we consider to be compassionate release. These include medical and geriatric parole, short- and long-term medical furloughs, suspension or reduction of sentences, and executive clemency on medical grounds. Many states have in place more than one of these means.

Most states recognize terminal illness and severe medical conditions as grounds for release. A majority require that a prisoner's condition be so poor that he or she will pose no threat to public safety. Many states provide compassionate release to prisoners when they reach a certain age and have served some minimum portion of their sentence. A few states consider the cost or difficulty of caring for prisoners who are very ill or dying. A handful of states cite humanitarian grounds.

The processes states use to decide if a prisoner is eligible for release range from straightforward to very complex. Many programs have multiple layers of review, which consume precious time for prisoners with worsening health or facing imminent death.

Only 13 states are required by state law to keep track of and report compassionate release statistics, with very few of them making that information public.

Most importantly, we learned that while compassionate release programs are widespread, very few individuals, on the whole, benefit.³¹ How few? **Pennsylvania**, for example, is not

required to report statistics, but a 2015 news article stated that only nine prisoners were granted compassionate release between 2009 and 2015.³² In **Kansas**, which has detailed eligibility criteria and process rules, just seven individuals received compassionate release between 2009 and 2016.³³ In **New Jersey**, medical parole has been granted no more than two times a year since 2010.³⁴

Dozens of states across the country have been passing sentencing and prison reforms over the past 10 years in an effort to safely reduce their prison populations and save money. The very small number of prisoners who have received compassionate release suggests that this avenue for reducing the number of high-cost, low-risk prisoners is sorely underused.

BARRIERS TO COMPASSIONATE RELEASE

Given the widespread availability of compassionate release, we wanted to understand why it is so infrequently used. Besides the difficulty for prisoners and their families of finding out about and understanding the conditions and requirements of these programs, we found other obstacles to compassionate release. Among them:

- Strict or vague eligibility requirements;
- Categorical exclusions;
- Missing or contradictory guidance;
- Complex and time-consuming review processes; and
- Unrealistic time frames

Most of the programs we studied presented multiple barriers to compassionate release. We discuss each type of barrier below.

Strict or vague eligibility requirements

In many states a prisoner only qualifies for compassionate release if diagnosed with a medical condition that results in debilitation or incapacitation severe enough to prevent him or her from committing a crime or posing a danger to the community. For example, **New York** provides for early release of prisoners with a “significant debilitating illness,” as long as their condition is so incapacitating that there is a reasonable probability they pose no threat to society.³⁵ While that may strike some as harsh, it is at least grounded in keeping the community safe — an acceptable purpose of sentencing.

In contrast, we were struck by the number of states that use eligibility criteria that seem unduly, and even cruelly, restrictive. **California** prisoners cannot secure medical parole unless they are permanently medically incapacitated, unable to perform “activities of daily living” such as breathing, eating or eliminating, and require constant, round-the-clock care.³⁶ **Georgia’s** medical reprieve mechanism is only available to prisoners who are “entirely incapacitated” and who are “reasonably expected” to die within 12 months.³⁷ In **Mississippi**, a conditional medical release requires that the prisoner be “bedridden.”³⁸

Some requirements are so vague or undefined that they can be misinterpreted. Prison staff or decision-makers may fail to identify eligible prisoners because they do not understand the criteria themselves. For example, **Montana** requires that to be eligible, a non-terminal prisoner must need “extensive medical attention.”³⁹ We could find nothing explaining what Montana considers “extensive.” **New**
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Hampshire will consider release of incapacitated or terminally ill prisoners only if the cost of their medical care is “excessive,”⁴⁰ without explaining what constitutes “excessive.” In **Missouri**, a prisoner can be granted medical parole if confinement “will necessarily greatly endanger or shorten the offender’s life.”⁴¹ **Rhode Island** permits severely ill prisoners with no chance of recovery early release, but only if the state will otherwise incur “exorbitant expenses” for their care, but the state’s rules fail to define “exorbitant.”⁴²

Categorical exclusions

Many states categorically exclude certain kinds of prisoners from consideration. For example, **Alaska** forbids medical parole to prisoners convicted of sexual assault or abuse.⁴³ **New Jersey** has a lengthy list of crimes that prevent a prisoner from being qualified for medical parole.⁴⁴ **South Carolina** and a number of other states will not consider prisoners who are sentenced to life without parole or death for compassionate release.⁴⁵ **Louisiana** regulations forbid release of prisoners with contagious diseases,⁴⁶ and **Maine** only considers prisoners in minimum security.⁴⁷ A handful of states deny release, even to dying prisoners, until they have served a minimum portion of their sentence. For example, **Indiana** will not consider terminally ill prisoners for a temporary leave due to terminal illness unless they are within seven and a half years of their release date.⁴⁸

Missing or contradictory guidance

We found a number of states providing little if any policy guidance or procedures that prison staff, corrections officials, or final decision-makers could use to implement compassionate release. In other cases,

we came across outdated policies or regulations starkly at odds with statutory provisions. We believe outdated or inconsistent rules and procedures prevent prisoners and their advocates from seeking compassionate release. These problems also frustrate corrections staff and other decision-makers from pursuing compassionate release in individual cases.

Arizona, for example, requires prisoners seeking release to be facing “imminent death,” but provides three different definitions of what is imminent — within three months, four months, or six months of death, depending on the authority.⁴⁹ **Maryland’s** medical parole statute lists criteria that are different from those listed in the regulation intended to implement it.⁵⁰ **Michigan** has medical parole but in name only. The program is described in a mere two sentences and there are no accompanying policies, rules, or guidance of any kind.⁵¹

This lack of information denies medical staff and corrections, parole, and/or executive officials the standards and procedures they need to do their work. They are likely to fill the gap with subjective interpretations and standards, or, lacking guidance, fail to act at all. For example, **Georgia** has a medical reprieve program for prisoners who are within 12 months of death.⁵² There are, however, no rules or regulations explaining how the Department of Corrections is supposed to approve, process, or refer eligible prisoners to the Georgia Board of Pardons and Paroles, which is the decision-maker, for medical reprieves.⁵³ Attempts to streamline requests so that they go directly from prisoners to the Board have not appeared to fix the problems; between 2011 and 2016, 14 prisoners died awaiting review and another 16 died

awaiting release after they had been approved.⁵⁴

One reason the statutory criteria is too restrictive or poorly designed is that most state legislatures have not used medical professionals to help define conditions such as “terminal illness” or “permanent incapacitation.”⁵⁵ For example, it is well-known in medical circles that the accuracy of predictions about when a person will die is very limited.⁵⁶ Relying on 30- to 60-day end-of-life predictions, or using any time frame for that matter, ignores the fact that physicians hesitate to make such forecasts and might err on the side of time frames that are unrealistically long. Some doctors are reluctant to predict life spans and so simply do not.⁵⁷ Medical eligibility criteria designed without the assistance of medical professionals are inexact and even counterproductive.

Complex and time-consuming review processes

While some states provide little to no guidance for those seeking compassionate release, other states have unnecessarily complex release procedures. These burdensome requirements have negative consequences. Gathering multiple diagnoses and institutional reports and checking and double-checking release plans take time, which many individuals who are eligible for compassionate release simply do not have. The requirement that a recommendation clear multiple decision-makers means the process can bog down when a request languishes on the desk of a busy corrections official. Documentation requirements can be seen as a waste of time by medical workers, as it takes hours to fill out paperwork during which they could be caring for prisoners. Some programs provide deadlines to help move applications forward, but most

do not. A lack of time frames means delays are inevitable.

Ohio is among the most extreme examples. The state has established two early release mechanisms: (1) judicial release for medically incapacitated or terminally ill prisoners (those within 12 months of death), and (2) administrative release for prisoners facing imminent death (within six months).⁵⁸ However, those facing imminent death cannot apply for administrative release until they have exhausted the judicial release process.⁵⁹ Worse, the judicial release process can be slow, requiring certification that the prisoner is medically eligible from the prison’s chief medical officer.⁶⁰ When denied, the prisoner must reapply to an administrative release process that is an even more confusing maze of hurdles and hoops for dying prisoners and their families to navigate, with no time frames or right to appeal.⁶¹

The state of **Washington** also subjects prisoners to multiple reviews and approval stages for its Extraordinary Medical Placement program.⁶² The Health Service Department must make findings ranging from whether the prisoner is seriously ill to whether the prisoner poses a low threat to the community and has funding and community support if released.⁶³ Documentation is gathered, and the case is referred to four different offices, two for additional investigation and evaluations and two to meet notice requirements.⁶⁴ The request must clear several additional hurdles before it makes it to the Secretary of Corrections, in whose hands rests the final decision.⁶⁵ The prisoner can be denied at almost every step of the process, and there are no required time frames.

Unrealistic time frames

A handful of states that provide early

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release to terminally ill prisoners undercut the authority by requiring a prognosis of only 30 to 60 days. Given that compassionate release review processes can eat up weeks or months, it is virtually impossible for a prisoner with a short time to live to survive long enough to hear the decision.

Kansas is one of the most extreme examples. To be eligible for Terminal Medical Release, a prisoner's death must be expected within 30 days.⁶⁶ A “unit team” in the prison initially evaluates the request, which then proceeds to a complicated vetting process. Reviews are conducted by officials at seven different levels in the Department of Corrections before reaching the Prisoner Review Board for a decision.⁶⁷ Annual reports from these two agencies do not include how many people facing death were released; however, news accounts indicate that only two people secured early release for medical reasons between 2011 and 2016. It was not reported whether either of those were for a terminal condition.⁶⁸

BEST COMPASSIONATE RELEASE PRACTICES

Nearly every program we studied includes barriers that limit prisoners seeking compassionate release. But many, including those programs with barriers, also include features that we consider useful and well-constructed. These features are worth highlighting here for policymakers trying to improve their state programs, with this caveat: Some of the positive features highlighted below are undermined by program flaws in the very same state.

Identifying individuals eligible for release

One of our chief concerns about compassionate release programs is that most prisoners do not even realize these mechanisms exist, much less know how to begin the process of applying and being considered. We were encouraged to find states that actively identify and provide initial support to prisoners. **Alabama** requires that applications and release forms be provided to all correctional medical care providers and made available at every institution so they can be distributed to prisoners.⁶⁹ Similarly, **New Mexico** corrections staff must provide all individuals over age 65, and thus potentially eligible for geriatric parole, with a copy of the policy and forms each year. In addition, that same information is provided to all prisoners when they arrive on a geriatric or long-term care unit.⁷⁰

While many states require that applications be initiated by corrections staff, a few states direct staff to actively seek prisoners who might qualify. In **North Carolina**, facilities housing acute and long-term care patients are required to identify on a quarterly basis prisoners who match the compassionate release medical and age criteria.⁷¹ In **California**,⁷² prison doctors are directed to identify and recommend individuals who might meet the medical parole eligibility criteria.

Involving families

Some states do a good job of making it possible for families to be involved in the compassionate release application process or in helping prisoners plan for early release. This kind of participation can help officials identify eligible prisoners and the resources they will need in the community should they be

released.

Quite a few states permit family members to begin the application process themselves. In **Connecticut**, a family member's request for a medical diagnosis to determine if the prisoner is eligible triggers the application process.⁷³ In **North Carolina**, families can begin the process by directly applying on the prisoner's behalf to the appropriate office.⁷⁴ **Idaho** allows family members to help with developing release plans for prisoners seeking medical parole, though it is up to the family member to tell the Deputy Warden of their interest in helping.⁷⁵

California is alone among the states in providing family notification, once authorities have identified a prisoner as potentially eligible for its Recall of Sentence due to terminal illness or permanent incapacitation. Within 48 hours of learning of the prisoner's condition, the warden must notify the prisoner about the recall process and arrange for a family member or other representative to be advised of the process and updated about the loved one's medical condition and prognosis.⁷⁶

Clear, commonsense, or objective eligibility criteria

We found that some states have clear and objective eligibility criteria. At least 17 states, for example, provide for geriatric parole, using age — combined in some states with time-served requirements — as eligibility indicators. These include **Texas** (65 years old),⁷⁷ **California** (at least 60 years old with 25 years served),⁷⁸ and **Virginia** (at least 60 years old with 10 years served or 65 years old with five years served).⁷⁹

Some states link criteria to commonsense considerations, such as the inability to provide appropriate medical or long-term care in a prison setting. **Hawaii**⁸⁰ considers whether the prisoner's condition requires treatment or a level of care that cannot be provided in a prison setting, as does **Wyoming**.⁸¹

We were also impressed with the handful of states that assess whether continued incarceration defeats the purposes of punishment, in the context of their state's compassionate release program. **Oregon** evaluates whether it would be cruel or inhumane to keep the individual in prison.⁸² **Rhode Island** states that “[m]edical parole is made available for humanitarian reasons and to alleviate exorbitant medical expenses associated with inmates whose chronic and incurable illness render their incarceration non-punitive and non-rehabilitative.”⁸³ **Hawaii** similarly addresses the purposes of punishment head-on, allowing medical release for prisoners too ill or cognitively impaired to participate in rehabilitation and/or to be aware of punishment.⁸⁴

While we believe **Ohio's** many-layered evaluation and decision-making processes likely hinder compassionate release, we found that the eligibility criteria of their program is broad and for the most part easily evaluated. For example, it provides for release of “medically incapacitated” prisoners who have any diagnosable medical condition (including dementia and cognitive disabilities); who cannot do things such as feeding or dressing themselves without significant assistance; are so affected that prison “offers no additional restriction”; and who are unlikely to noticeably improve.⁸⁵



“**We were also impressed with the handful of states that assess whether continued incarceration defeats the purposes of punishment, in the context of their state's compassionate release program.**”

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Reasonable time frames and processes

While many states' lengthy processes for compassionate release based on terminal illness can mean the grant comes after a prisoner has already died, other states wisely allow the process to follow on a more reasonable schedule. **South Carolina** prisoners can begin the process if they are expected to die within two years,⁸⁶ while **South Dakota**,⁸⁷ the **District of Columbia**,⁸⁸ and **Vermont**⁸⁹ do not require a prognosis of death within any specific time frame when considering compassionate release for prisoners who are terminally ill.⁹⁰

Several states have well-defined deadlines and clear steps for staff and officials to complete assessments, review recommendations, and make decisions. This clarity is especially important in the cases of prisoners who are nearing the end of life and for anyone else whose incarceration is more burdensome due to age or illness. **California** lays out time frames within which assessments, reviews, and recommendations must occur for medical parole cases. The expectations and steps taken seem clearly set out and specific and, because they are time-limited, may keep cases from languishing without action.⁹¹

Minnesota has a relatively well-defined documentation and assessment process (again with deadlines), and while there are a series of reviews, roles appear thoughtfully designed and clear.⁹² The entire process, including the ultimate decision, takes place within the Department of Corrections.⁹³ That said, the **Minnesota** program appears better on paper than in practice; only seven people were granted Conditional Medical Release in 2016.⁹⁴

Representation

Given the complexity of rules and criteria, we were surprised to see how few systems allow for or provide counsel for prisoners, including prisoners who must go before a parole board. A very few states allow lawyers to represent prisoners in release proceedings before a parole board or judge. **Alaska** allows petitioners to be represented by counsel, but at the prisoner's expense.⁹⁵ In **Arkansas**, clemency applicants may have a representative before the Parole Board.⁹⁶ In **Rhode Island**, the public defender's office can represent prisoners seeking Medical Parole.⁹⁷

Supportive release planning

Slightly more than half the states require release plans for prisoners granted compassionate release. Some states even prohibit compassionate release unless there is a detailed discharge plan and it can be determined that the prisoner's health care costs and needs will be met. Despite those requirements, only a handful of states provide support and assistance in developing these plans. Given that prisoners who are seriously ill or elderly will need to secure housing, health care, Medicaid, and other public benefits, assistance with release planning is essential. It is important that the prisoner have assistance with applying for benefits early in the compassionate release process, especially considering the complexity of navigating eligibility for public benefits and the limitations that all prisoners, especially those who are struggling with a serious or terminal illness, face in doing so.

Minnesota appears to provide excellent resources and supports to prisoners on this front, even before they are identified for release. Release planning



It is important that the prisoner have assistance with applying for benefits early in the compassionate release process, especially considering the complexity of navigating eligibility for public benefits and the limitations that all prisoners, especially those who are struggling with a serious or terminal illness, face in doing so.”

begins as soon as the Department of Corrections identifies a prisoner as potentially eligible, and specialized release planners and caseworkers put all the pieces in place. This includes arranging for the prisoner to be pre-assessed by county social services, applying to community placement facilities, coordinating the request so that the individual's medical needs are considered, and applying for Medicaid and other health care funding.⁹⁸ **North Carolina** provides a social worker who begins comprehensive release planning within 45 days of the prisoner's Medical Release request.⁹⁹ The social worker meets with the prisoner and develops a "comprehensive, viable and appropriate" release plan, including medical treatment, identifying who will provide it, and locating and applying for financial resources.¹⁰⁰ **New York** begins the process once a prisoner has been recommended for Medical Parole by the Department of Corrections and Community Supervision.¹⁰¹ **New York** policy also provides for comprehensive support once the release decision has been made, ensuring that records and transportation arrangements are in place.¹⁰²

Right to reapply

The majority of states do not provide prisoners denied compassionate release a means to appeal the denial. Given how few people are released by state prisons and the fact that mistakes of fact or judgment are inevitable, the right to appeal should be guaranteed. At best, a prisoner may reapply after a set time.

Alaska permits prisoners denied Special Medical Parole to seek reconsideration within 30 days of the decision and sets specific grounds for reconsideration.¹⁰³ The Board must rule within 60 days and may grant a new hearing.¹⁰⁴ **Rhode Island** allows a prisoner to reapply after 60 days of a

rejection if he or she can demonstrate a material change in circumstances.¹⁰⁵ Similarly, **Delaware** waives the normal waiting period of one year in the case of serious medical illness.¹⁰⁶

Tracking and reporting outcomes

More than half of the states do not track or collect any data on how many people apply for and receive compassionate release. We believe that if lawmakers were aware of how few people are granted compassionate release they might be moved to examine why and act to improve the programs. Knowing who asks for compassionate release, who is denied, and why and how those requests are decided is essential to improving outcomes so that, for example, more eligible prisoners are released and terminally ill prisoners get expedited reviews.

Thirteen states have a statutory or regulatory reporting requirement for their compassionate release programs. They include **New Mexico**, which requires that the Parole Board provide annual reports to the legislature about how many people apply for release, the grounds on which they rely, reasons for denials, and the number of prisoners who must return to prison and why they are returned.¹⁰⁷ **New York** also has comprehensive reporting rules and makes Medical Parole data available on the Department of Corrections and Community Supervision website.¹⁰⁸ **Massachusetts'** new Medical Parole law requires an annual report detailing the numbers of prisoners applying, including the race and ethnicity of each applicant; the number of prisoners granted Medical Parole, and the race and ethnicity of each; the nature of the illness of each applicant; the number of prisoners denied Medical Parole, the



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The majority of states do not provide prisoners denied compassionate release a means to appeal the denial.”

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reason for the denials, and the race and ethnicity of each prisoner denied; and the number of prisoners released who have been returned to Department custody and the reason for each prisoner's return.¹⁰⁹

In addition, eight states publish some publicly available data on the numbers of individuals granted compassionate release even though they are not required by law to do so. **Colorado** and **Florida** are particularly noteworthy in the comprehensiveness of the data they collect and make available online.

CONCLUSION

We opened this report with the story of Bernie Mulka, the prisoner who was dying shackled to a prison bed. What he and his family endured to secure his compassionate release is all too familiar. That he was released is not; compassionate release grants are the exception rather than the rule.

We set out to write the state memos on which this report is based to give families like the Mulkas accurate information about compassionate release. Prisoners do not know that a program exists, much less who is eligible. They do not know how to apply or how decisions are made. They do not know when to expect to receive the ultimate decision, or by what means. In many cases prisoners are literally running out of time to find the information they need to be effective advocates for release. They and their families know very little about a program that has profound implications for all of them.

This project was designed to give them that information.

Unpacking state laws and regulations challenged us. In researching state programs, we found many problems with compassionate release besides the paucity of information for prisoners. While compassionate release is nearly universal, it is underused. We believe that is due, in part, to poor design. For example, the criteria by which a

prisoner's application is granted or not is often not informed by medical knowledge and is unduly strict. Stated rules do not give sufficient guidance to staff and officials, and time frames are so unrealistic that prisoners die waiting for decisions that come too late.

Meanwhile, we also found programs in some states with commendable features, such as family notification, well-defined criteria, and clear directions to decision-makers with realistic time frames.

Providing cohesive and concise information about compassionate release programs as we have done here is critical to improving those programs. We hope the state memos included will spur lawmakers, prison officials, and parole authorities to critically examine compassionate release programs and take steps toward improvement.

We have compiled recommendations that draw on the best and worst features of state programs. Our list addresses several aspects of the process, from eligibility to release planning and transparency.

Above all, we hope that these recommendations help policymakers approach the task of improving early release programs with compassion, recognizing that the prisoners for whom the programs are designed often face the very real, human, and daunting challenges of extreme illness, age, disability, or impending death. It's time to bring utility, efficiency, and above all humanity into a process that should reflect foundational principles of mercy and justice.

RECOMMENDATIONS

Enact Compassionate Release Policies in All States

1. Pass or amend legislation guaranteeing compassionate release on the basis of serious medical conditions, terminal illness, and advanced age.



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It's time to bring utility, efficiency, and above all humanity into a process that should reflect foundational principles of mercy and justice.”

2. Enact, amend, or update agency rules so that they are consistent with compassionate release laws.

3. Replace uncertain, inconsistent, or confusing rules and policies with effective, clear policies.

Ensure That Eligibility Criteria Is Fair and Just

4. Guarantee that all eligible prisoners are considered for compassionate release, notwithstanding their crime, sentence, or amount of time left to serve.

5. Remove unduly strict, cruel, or otherwise unwarranted eligibility requirements.

6. Base medical, end-of-life, and geriatric criteria on evidence and best practices, with input from medical experts.

Establish Deadlines to Keep Applications Moving

7. Establish time frames within which document-gathering, assessment, and decision-making must occur that are realistic, provide sufficient time to develop informed decisions, and are sensitive to the need for expedited review in the case of terminal illness.

Publicize Compassionate Release Programs and Policies

8. Provide information about compassionate release options to each entering prisoner; ensure prison handbooks include a section that clearly explains eligibility and application.

9. Make sure prison law libraries have easy-to-find information and application forms.

10. Provide readily accessible information on relevant state agency websites.

11. Involve families in identifying eligible prisoners and providing support, such as in coordinating release planning.

12. Train corrections staff to understand and eligibility criteria for compassionate release.

13. Teach staff how to identify eligible prisoners and make it their duty to do so.

14. Keep prisoners, family members, and advocates informed at each stage of the assessment and decision-making process.

15. Designate and train staff as family liaisons to coordinate with family members.

Provide Assistance With Post-Release Planning

16. Assign dedicated staff to assist ill and elderly prisoners with pre-and post-release planning, including applying for public assistance, veterans' benefits, housing and medical facility placements, Medicaid and/or Medicare, and other supports.

17. Allow attorneys to apply for compassionate release on behalf of prisoners.

18. Ensure the right to counsel for all compassionate release proceedings, including appeals and revocations.

19. Provide the right to appeal denials or the right to reapply following a denial.

Require Data Collection and Reporting

20. Require all agencies involved in compassionate release to provide annual data—including demographic information—on applications, approvals, denials, and revocations, including reasons for denials and revocations.

21. Establish measures of success and report on how well states meet these measures.

Notes

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¹² Carson, *supra* note 10, at 1.

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¹⁶ *Id.* See also Pew Center on the States, *One in 100: Behind Bars in America 2008* at 11-12 (2008), http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2008/one20in20100pdf.pdf; see also Pro & Marzell, *supra* note 7, at 162, 163.

¹⁷ Pew Charitable Trusts, *Prison Health Care: Costs and Quality* 23 (Oct. 2017), http://www.pewtrusts.org/~media/assets/2017/10/sfh_prison_health_care_costs_and_quality_final.pdf.

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⁵⁶ Brie Williams et al., *supra* note 23, at 6.

⁵⁷ *Id.*

⁵⁸ Ohio Rev. Code § 2967.05.

⁵⁹ Ohio Dep't of Rehabilitation and Correction (DRC) R. 66-ILL-01§ VI.A. The Ohio statute governing Release as if on Parole does not require this extra step.

⁶⁰ Ohio Rev. Code § 2929.20 (N).

⁶¹ Ohio DRC Rule 66-ILL-01 § VI.

⁶² Wash. Rev. Code § 9.94A.728 (1) (c); State of Washington Department of Corrections Policy 350.270-Extraordinary Medical Placement.

⁶³ State of Washington Department of Corrections Policy 350.270 §§ III.A.1 - 4.

⁶⁴ *Id.*

⁶⁵ *Id.* at § V.A.

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⁷⁴ N.C. Gen. Stat. § 15A-1369.3 (a); North Carolina Department of Public Safety/Prisons, Policy and Procedure, Chapter C, § .2104 (b) (2).

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⁷⁶ Cal. Penal Code §§ 1170 (e) (4) and (5).

⁷⁷ Tex. Gov't Code Ann. § 508.146 (a) (1) (A).

⁷⁸ Cal. Penal Code § 3055 (a). While we appreciate the clarity, the 25-year minimum strikes us as extreme.

⁷⁹ Va. Code Ann. § 53.1-40.01; Virginia Department of Corrections Operating Procedure 820.2, §§ VI.A.1.a - b.

⁸⁰ Hawaii Dep't of Public Safety, Corrections Administration Policy and Procedures 10.1G.11 § 3.

⁸¹ Wyo. Stat. Ann. § 7-13-424 (a) (i).

⁸² Or. Admin. R. 255-040-0028 (1) (a) - (d).

⁸³ R.I. Gen. Laws § 13-8.1-2.

⁸⁴ Hawaii Dep't of Public Safety, Corrections Administration Policy and Procedures 10.1G.11, § 3.

⁸⁵ Ohio Rev. Code § 2929.20 (A) (5).

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⁸⁶ S.C. Code Ann. § 24-21-715 (A) (3).

⁸⁷ House Bill 1109, § 1 (1), as signed by Governor Dennis Daugaard on March 21, 2018, <http://sdlegislature.gov/docs/legsession/2018/Bills/HB1109ENR.pdf>.

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⁸⁹ Vt. Stat. Ann. tit. 28, § 502a (d).

⁹⁰ We are not endorsing the use of predictive prognoses, especially in light of concerns about accuracy that may prevent clinicians from certifying that a person will die within a certain length of time. That said, if they exist, it strikes us that longer rather than shorter time frames give the process time to play out.

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⁹² Minn. Dep't of Corrections Policy 203.200.

⁹³ *Id.*

⁹⁴ Minn. Dep't of Corrections, 2016 Probation Survey 39 (April 2017), <https://mn.gov/doc/data-publications/research/publications/publications-list.jsp?id=1089-297101>.

⁹⁴ Alaska Admin. Code tit. 22, § 20.610 (b).

⁹⁶ Arkansas Parole Board Policy Manual § 4.7.

⁹⁷ R.I. Gen. Laws § 13-8.1-4 (i) (3).

⁹⁸ Minn. Dep't of Corrections Policy 203.200, § C.

⁹⁹ N.C. Dep't of Public Safety/Prisons, Policy and Procedure, Chapter C, §§ .2104 (i) and (j).

¹⁰⁰ N.C. Dep't of Public Safety/Community Corrections, Policy and Procedures, Chapter E, § .0903.

¹⁰¹ N.Y. Dep't of Corrections and Community Supervision Directive 4304, § III.F.

¹⁰² *Id.* at § II.G.

¹⁰³ Alaska Admin. Code tit. 22, § § 20.630 (a) and (b).

¹⁰⁴ *Id.* at § 20.635.

¹⁰⁵ R.I. Gen'l Laws § 13-8.1-4 (h). However, it is not clear if the prisoner can appeal if a material change occurs later.

¹⁰⁶ Del. Code Ann. tit. 11, § 4217 (d) (3).

¹⁰⁷ N.M. Stat. § 31-21-25.1-B.

¹⁰⁸ New York State Department of Corrections and Community Supervision, Medical Parole 2014, http://www.doccs.ny.gov/Research/Reports/2015/Medical_Parole_Report_2014.pdf.

¹⁰⁹ Mass. Gen. Laws ch. 127, § 119A (i).

Compassionate Release State by State



| State | State Name for Compassionate Release Program(s) | Covers Prisoners with Serious Medical Conditions | Covers Terminally Ill Prisoners (Prognosis, if Required by State Law) | Covers Elderly Prisoners (Age/Time served, if Required by State Law) |
|------------|--|--|--|---|
| Alabama | Medical Parole | ✓ | ✓ (12 months or less to live) | ✓ (60+) |
| | Medical Furlough | ✓ | ✓ (12 months or less to live) | ✓ (55+) |
| Alaska | Special Medical Parole | ✓ | ✓ | |
| | Discretionary Parole Based on Age | | | ✓ (60+ served at Least 10 years) |
| Arizona | Executive Clemency Due to Imminent Danger of Death | | ✓ (3-6 months to live) | |
| | Compassionate Leave/Furlough | ✓ | ✓ | |
| Arkansas | Medical Parole | ✓ | ✓ (2 years left to live) | |
| | Early Release to Home Detention | ✓ | ✓ (2 years left to live) | |
| | Executive Clemency Due to Life Threatening Medical Condition | ✓ | | |
| California | Medical Parole | ✓ | | |
| | Recall of Sentence | | ✓ (6 months or less to live) | |
| | Elderly Parole | | | ✓ (60+/served at Least 25 years) |
| Colorado | Special Needs Parole | ✓ | ✓ | ✓ (55+) |
| 28 | | | | |

| State | State Name for Compassionate Release Program(s) | Covers Prisoners with Serious Medical Conditions | Covers Terminally Ill Prisoners (Prognosis, if Required by State Law) | Covers Elderly Prisoners (Age/Time served, if Required by State Law) |
|----------------------|---|--|--|---|
| Connecticut | Medical Parole | ✓ | ✓ (6 months or less to live) | |
| | Compassionate Parole Release | ✓ | | |
| | Nursing Home Release | ✓ | | |
| Delaware | Sentence Modification Due to Illness of Infirmity | ✓ | | ✓ |
| | Medical Parole (Old-Law Prisoners Only) | ✓ | | |
| District of Columbia | Medical and Geriatric Suspension of Sentence | ✓ | ✓ (6 months or less to live) | ✓ (65+) |
| | Medical Geriatric Parole (Old-Law Prisoners Only) | ✓ | ✓ (6 months or less to live) | ✓ (65+) |
| Florida | Conditional Medical Release | ✓ | ✓ | |
| Georgia | Medical Reprieve | ✓ | ✓ | |
| | Parole Due to Disability Or Advanced Age | ✓ | | ✓ (62+) |
| Hawaii | Medical Release | ✓ | ✓ | ✓ |
| Idaho | Medical Parole | ✓ | ✓ | |
| Illinois | Executive Clemency for Serious Medical Conditions | ✓ | ✓ | |
| Indiana | Special Medical Clemency | ✓ | ✓ | |
| | Temporary Leave | | ✓ | |
| | | | | 29 |

| State | State Name for Compassionate Release Program(s) | Covers Prisoners with Serious Medical Conditions | Covers Terminally Ill Prisoners (Prognosis, if Required by State Law) | Covers Elderly Prisoners (Age/Time served, if Required by State Law) |
|-----------------|--|--|--|---|
| Iowa | No formal compassionate release policies | | | |
| Kansas | Functional Incapacitation Release | ✓ | | |
| | Terminal Medical Release | | ✓ (30 days or less to live) | |
| Kentucky | Early Medical Consideration | ✓ | ✓ (1 year or less to live) | |
| Louisiana | Medical Parole | ✓ | ✓ (1 year or less to live) | |
| | Compassionate Release | ✓ | ✓ (60 days or less to live) | |
| | Medical Treatment Furlough | ✓ | | |
| | Parole Based on Age | | | ✓ (45+/served at least 25; 60+/served at least 10) |
| Maine | Supervised Community Confinement | ✓ | ✓ | ✓ |
| Maryland | Medical Parole | ✓ | | |
| | Geriatric Parole (Limited to Specific Prisoners) | | | ✓ (60+/served at least 15) |
| Massachusetts | Medical Parole | ✓ | ✓ (18 months or less to live) | |
| | Executive Clemency Medical Release | ✓ | ✓ | |
| Michigan | Medical Parole | ✓ | | |
| | Executive Clemency Due to Deteriorating Terminal Medical Condition | ✓ | ✓ | |
| Minnesota 30 | Conditional Medical Release | ✓ | ✓ (12 months or less to live) | |

| State | State Name for Compassionate Release Program(s) | Covers Prisoners with Serious Medical Conditions | Covers Terminally Ill Prisoners (Prognosis, if Required by State Law) | Covers Elderly Prisoners (Age/Time served, if Required by State Law) |
|----------------|---|--|--|---|
| Mississippi | Conditional Medical Release | ✓ | ✓ | |
| | Parole Based on Advanced Age | | | ✓ (60+/served at least 10 years) |
| Missouri | Medical Parole | ✓ | ✓ (6 months or less to live) | ✓ |
| | Executive Clemency/Commutation Due to Illness or Age | | ✓ | ✓ |
| Montana | Medical Parole | ✓ | ✓ (6 months or less to live) | |
| Nebraska | Medical Parole | ✓ | ✓ | |
| Nevada | Residential Confinement Due to Physical Incapacitation/III Health | ✓ | ✓ (12 months or less to live) | |
| New Hampshire | Medical Parole | ✓ | ✓ | |
| New Jersey | Medical Parole | ✓ | ✓ (6 months or less to live) | |
| New Mexico | Medical and Geriatric Parole | ✓ | ✓ (6 months or less to live) | ✓ (65+) |
| New York | Medical Parole | ✓ | ✓ | |
| North Carolina | Medical Release | ✓ | ✓ (6 months or less to live) | ✓ (65+) |
| | Extension of the Limits of Confinement | ✓ | ✓ (6 months or less to live) | |
| North Dakota | Medical Parole | ✓ | ✓ | |
| Ohio | Judicial Release | ✓ | ✓ (12 months or less to live OR death imminent) | |
| | Release as if on Parole | ✓ | ✓ (12 months or less to live OR death imminent) | |

| State | State Name for Compassionate Release Program(s) | Covers Prisoners with Serious Medical Conditions | Covers Terminally Ill Prisoners (Prognosis, if Required by State Law) | Covers Elderly Prisoners (Age/Time served, if Required by State Law) |
|---------------------------|---|--|--|---|
| Ohio | Medical Release (Old-Law Prisoners Only) | ✓ | ✓ (12 months or less to live OR death imminent) | |
| Oklahoma | Medical Parole | ✓ | ✓ | |
| | Parole Based on Age | | | ✓ (60+/served at least 10 years or 1/3 of sentence) |
| Oregon | Early Medical Release | ✓ | ✓ | ✓ |
| Pennsylvania | Deferment of Sentence Due to Serious or Terminal Illness | ✓ | ✓ (less than year to live) | |
| Rhode Island | Medical Parole | ✓ | ✓ (18 months or less to live) | |
| South Carolina | Parole for Terminally Ill, Geriatric, or Permanently Disabled Inmates | ✓ | ✓ (2 years or less to live) | ✓ (70+) |
| | Parole for Medical Reasons | | ✓ (1 year or less to live) | |
| | Special Parole of Veterans for Psychiatric Treatment | ✓ | | |
| | Furlough/Extension of Limits of Confinement | ✓ | ✓ | |
| South Dakota | Compassionate Parole | ✓ | ✓ | ✓ (65+/served at least 10; 70+/served at least 30) |
| Tennessee | Medical Furlough | ✓ | ✓ | |
| | Executive Clemency Due to Illness or Disability | ✓ | ✓ | |
| Texas | Medically Recommended Intensive Supervision | ✓ | ✓ (less than 6 months to live) | ✓ (65+) |
| Utah | Compassionate Release | ✓ | | ✓ |
| Vermont | Medical Parole | ✓ | ✓ | |

| State | State Name for Compassionate Release Program(s) | Covers Prisoners with Serious Medical Conditions | Covers Terminally Ill Prisoners (Prognosis, if Required by State Law) | Covers Elderly Prisoners (Age/Time served, if Required by State Law) |
|---------------|---|--|--|---|
| Vermont | Medical Furlough | ✓ | ✓ | |
| Virginia | Executive Medical Clemency (Medical Pardon) | | ✓ (10-12 months or less to live OR death Imminent) | |
| | Geriatric Conditional Release | | | ✓ (60+/served at least 10; 65+/served at least 5) |
| Washington | Extraordinary Medical Placement | ✓ | ✓ | ✓ |
| West Virginia | Executive Clemency Due to Life-Threatening Medical Condition | ✓ | ✓ | |
| | Medical Respite | ✓ | ✓ | |
| Wisconsin | Sentence Modification Due to Extraordinary Health Condition | ✓ | | ✓ (60+/served at least 10; 65+/served at least 5) |
| | Parole Due to Extraordinary Circumstances (Old-Law Prisoners) | ✓ | | ✓ |
| Wyoming | Medical Parole | ✓ | ✓ (12 months or less to live) | ✓ |



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