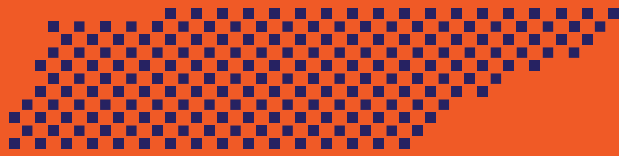


Tennessee



Overall Grade for Tennessee

Total Grade

36
/100

Letter Grade

F

Program Grades

	Total Grade	Letter Grade
Medical Furlough	53/100	F
Executive Clemency Due to Illness or Disability	39/100	F
Geriatric Parole	16/100	F

Medical Furlough

Total Grade

53 /100

Letter Grade

F

Eligibility Criteria

22/30

6/10 Clearly set out with understandable and measurable standards.

7/10 Generous or not unduly restrictive.

9/10 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

3/5 Documentation and assessment are straightforward, lacking multiple or redundant reviews and authorizations.

2/5 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

15/10

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. **+5**

5/5 Release planning begins early in the process.

Agency Policy Design

7/15

5/5 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.

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.

4/10

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**

4/5 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**



Overall Penalty

-10 The Department of Corrections Commissioner granted release to only six of the 36 people eligible for Medical Furlough in 2019 and 2020. Given the fact that every person's case was extensively documented and supported with medical reports, each had a place to go, had a way to pay for housing and health care, and was expected to die within the year or was so severely physically and psychologically compromised that the individual could no longer engage in self-care, the program should have benefited more of them.

The Numbers

In response to FAMM's request for information, the Department of Corrections reported:

2019 16 people met eligibility criteria and were submitted for approval, but only three were granted Medical Furlough.

2020 20 people met eligibility criteria and were submitted for approval, but only three were granted Medical Furlough

High and Low Marks

HIGH MARK

- Medical Furlough **eligibility criteria** are, for the most part, clear and measurable, mostly generous, and available to almost everyone. The criteria would benefit from definitions for standards such as "no longer able to provide self-care in prison due to severe physical or psychological deterioration." Providing examples would help evaluators and the Commissioner, who makes the final decision, understand whether an incarcerated person meets those standards. Those criteria are also rather ungenerous, because, for example, some people likely will be able to undertake some self-care or do so with assistance, even though experiencing severe deterioration.
- Tennessee provides thoughtful and thorough **release planning support** that commences early in the process. Tennessee's top grade here is enhanced with **extra credit** because the Department assists individuals to apply for public benefits.

LOW MARKS

- Though the Medical Furlough policy is very detailed, prescriptive, and filled with information about assigned responsibilities and steps to take, the program did not earn passing grades for **policy design** or **procedures**. While FAMM notes policies are laid out in admirable detail, we nonetheless had the following concerns:
 - ▶ The routing process seems rather elaborate and potentially redundant in places.
 - ▶ While the legislature amended the statute in 2019, the Department has not updated its policy, resulting in some inconsistencies, including in the standards for terminal illness (statute: Death within 12 months; policy: Death is "imminent.").
 - ▶ Some time frames govern steps in the process, but not every step has a deadline.
 - ▶ The Commissioner, who makes the final decision, receives a great deal of information about the individual but not much in the way of guidance regarding standards to apply when making the Medical Furlough decision.

Executive Clemency Due to Illness or Disability

Total Grade

39 /100

Letter Grade

F

Eligibility Criteria

21/30

2/10 Clearly set out with understandable and measurable standards.

10/10 Generous or not unduly restrictive.

9/10 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

7/15

2/5 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

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

6/15

2/5 Agency rules exist for all stages of identification, initiation, assessment, and decision-making.

2/5 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.

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 UTD* 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**

* 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 for information, the Board of Parole reported that Governor Bill Lee did not grant any Executive Clemency Due to Illness or Disability requests in 2019 and 2020.

High and Low Marks

HIGH MARKS

- While **eligibility criteria** are undefined, they are potentially generous in that incarcerated individuals with a life-threatening illness or severe, chronic disability – excluding those sentenced to death – may apply.
- Incarcerated people seeking Executive Clemency Due to Illness or Disability may have **counsel** for the Board of Parole process.

LOW MARKS

- **Overall**, Executive Clemency Due to Illness or Disability **failed**. It failed because very little information or policy exists to guide the process; the criteria, while potentially generous, are undefined and vague; and while the Board, which recommends clemency candidates to the Governor, follows some procedures, the Department of Corrections has the barest hint of guidance regarding its responsibilities, and the Governor has none whatsoever. It is little wonder no one secured Executive Clemency Due to Illness or Disability in 2019 or 2020.
- A person with a life-threatening illness or severe chronic disability may be eligible for Executive Clemency and may apply to the Board. The statute gives no guidance at all to understand the **eligibility criteria**, and the policy does not define the criteria either.
- Some policy exists to govern Board **procedures**, but no guidance exists for the Department, which must document medical conditions, or the Governor, who decides whether the individuals merit clemency.
- There is no mention of **release planning** or the right to **reapply** if denied.

Geriatric Parole

Total Grade

16 /100

Letter Grade

F

Eligibility Criteria

16/30

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

0/10 Generous or not unduly restrictive.

6/10 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

0/15

0/5 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

0/15

0/5 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.

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

The Board of Parole has not published information indicating any individual has been released under the Geriatric Parole program.

High and Low Marks

HIGH MARKS

- None

LOW MARKS

- **Overall**, Geriatric Parole **failed** because the state has done nothing to implement this version of compassionate release since the state enacted the authority in April 2021. While the statute defines eligibility criteria, neither the Department of Corrections nor the Board of Parole has published a policy guiding the agencies in carrying out the program.
- **Eligibility criteria** are extremely narrow. An individual must be at least 70 years old; dying from a chronic, incurable medical condition; and have served at least five years of the sentence to be eligible. This is one of the most limited geriatric programs FAMM has ever seen, especially given that it requires the individual to be terminally ill before the person can be considered for geriatric release.
- No information exists about who starts the application process or how, earning the program a failing grade for **engaging the process**.
- FAMM failed the program for both **agency policies** and **procedures** because none exists with the exception of a requirement that incarcerated individuals produce two sworn statements from physicians that their condition is chronic and likely to result in their death.
- Geriatric Parole likewise failed all other grading criteria, given that nothing exists to govern **release planning support** or **right to counsel and appeals**.