

Virginia

Overall Grade for Virginia

Total Grade

45
/100

Letter Grade

F

Program Grades

	Total Grade	Letter Grade
Conditional Release Based on Terminal Illness	26/100	F
Executive Medical Clemency	29/100	F
Geriatric Conditional Release	81/100	B-

Conditional Release Based on Terminal Illness

Total Grade

26

 /100

Letter Grade

F

Eligibility Criteria

18/30

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

6/10 Generous or not unduly restrictive.

2/10 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 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

5/15

0/5 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

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.

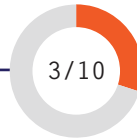
0/5 Rules provide clear guidance to reviewers and decision-makers about steps to take and standards to apply.

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.



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**

3/5 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 program did not exist in 2019 and 2020. A review of Virginia Parole Board reports from 2021 and 2022 show no cases of Conditional Release Based on Terminal Illness.

High and Low Marks

HIGH MARK

- **Eligibility criteria** are straightforward and easy to apply with a timeline for people seeking Conditional Release Based on Terminal Illness. Applicants must be within 12 months of death.

LOW MARKS

- **Agency policy:** Despite the fact that the statute enacted in 2021 that established Conditional Release Based on Terminal Illness requires the Parole Board to promulgate implementing regulations, the Parole Board has not done so. Its regulations date from 2006. Consequently, no agency policy exists, hence the failing grades in all categories.
- While terminal illness **eligibility criteria** are easy to understand and the time-left-to-live standard is likely adequate, the law **categorically excludes** from Conditional Release many people based on a lengthy list of offenses.
- It appears that incarcerated individuals who are dying are solely responsible for **engaging the process** and their own **release planning**. They must prepare and submit the application and provide required documentation to the Parole Board. The petition must include: (1) medical reports, (2) residential plans, (3) family and community support, (4) names and contact phone numbers for "support individuals or groups," and (5) any other pertinent information. According to the petition form, Department of Corrections staff may assist in gathering pertinent information and completing the form, but they do not appear to have assigned roles. FAMM believes that burdening people near the end of their life with documentation and release planning is unrealistic and cruel.
- The Parole Board, as discussed above, has failed to update its regulations to account for Conditional Release Based on Terminal Illness. Therefore, no **procedures** exist, no **release planning** takes place, and no **reporting** occurs.

Executive Medical Clemency

Total Grade

29

 /100

Letter Grade

F

Eligibility Criteria

20/30

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

0/10 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

0/10

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

2/15

0/5 Clinical and other staff can identify potentially eligible individuals and initiate the process.

2/5 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 UTD 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 UTD 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

7/10

2/5 Agencies are obliged to gather, compile, and report release data to legislature.

5/5 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**

* 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

According to the Governor's annual report to the Virginia General Assembly:

2019 The Governor granted three terminally ill individuals Executive Medical Clemency.

2020 He granted one terminally ill individual Executive Medical Clemency.

High and Low Marks

HIGH MARKS

- **Eligibility criteria** are straightforward, if impossibly miserly, and no one is categorically excluded from consideration.
- The Governor submits **annual reports** to the legislature on the number of people granted Executive Medical Clemency.

LOW MARKS

- While the **eligibility criteria** are clear, they are also exceptionally narrow. Terminally ill people may apply for Executive Medical Clemency but only if within three months of death. That is too short of a time frame in FAMM's view for two reasons. First, prognostication is famously unreliable, and individuals may die much more quickly. Second, three months is not enough time to complete the process from application to final decision in most instances.
- **Agency policy** does not exist for this program, with one exception. The Commonwealth Secretary or the Parole Board may ask Department of Corrections units for health, programming, work and disciplinary history, home plans, and other information to help with evaluating the application.
- No **procedures** govern the assessment and decision-making stages, and no standards exist (other than the time-left-to-live criterion) to guide reviewers at the Department and Parole Board levels.
- While the Department has fairly comprehensive guidance on **prerelease planning**, that does not appear to apply to incarcerated individuals seeking Executive Medical Clemency. They are not mentioned, and some of the time frames for completing release planning tasks are as long as 12 months.

Geriatric Conditional Release

Total Grade

81

 /100

Letter Grade

B-

Eligibility Criteria

27/30

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

10/10 Generous or not unduly restrictive.

7/10 No categorical exclusions/everyone is eligible for consideration.

× **Extra credit:** Terminal illness time-left-to-live provisions are reasonable and sufficiently long to permit the completion of the review and decision-making processes. **0**

Procedures

7/10

2/5 Documentation and assessment are straightforward, lacking multiple or redundant reviews and authorizations.

5/5 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

15/15

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.

5/5 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

10/10

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**

0/5 Release planning begins early in the process.

Agency Policy Design

12/15

4/5 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.

4/5 Rules provide clear guidance to reviewers and decision-makers about steps to take and standards to apply.

Data Collection and Public Reporting

10/10

5/5 Agencies are obliged to gather, compile, and report release data to legislature.

5/5 Reporting is made available to the public via annual reports or other means.

5/10

Right to Counsel and Appeals

0/5 Program allows counsel to represent people before decision-maker (i.e., parole board, commissioner, or court).

✘ **Extra credit:** Denials are appealable. **0**

5/5 Individuals have the right to reapply should conditions change.

✘ **Extra credit:** Revocations are not used to return people to prison because their condition improves or goes into remission or because the individual outlives the prognosis. **0**



Overall Extra Credit

+5 The Virginia Parole Board gathers and publishes comprehensive data about individuals considered for, granted, and denied Geriatric Conditional Release. That information includes demographic data, earning the program extra credit.



Overall Penalty

-10 This otherwise thoughtfully designed program fails too many of the people it should benefit. The Parole Board grants Geriatric Conditional Release to only a very small percentage of the individuals it considers. In 2019, it approved less than 4% of applicants and in 2020 only 8.4%.

The Numbers

According to the Virginia Parole Board:

2019 It granted Geriatric Conditional Release to 24 of the 664 applicants.

2020 It granted Geriatric Conditional Release to 79 of the 940 applicants.

High and Low Marks

HIGH MARKS

- **Eligibility criteria** are straightforward and relatively generous. People 60 and older having served at least 10 years and those 65 and older having served at least five years are eligible for Geriatric Conditional Release.
- **Engaging the process:** Virginia is among a small group of states that ensures eligible people are identified, evaluated, and reevaluated routinely. The program considers everyone within a year of eligibility, and those denied are reevaluated annually thereafter.
- Virginia's Geriatric Conditional Release program received high marks for **policy** and **procedures**, although FAMM took off points because we could not locate a policy governing the Department of Corrections' role. General Parole Board rules supplement those that cover Geriatric Conditional Release applications, and they are quite thorough.
- **Release planning** appears thorough and includes assistance with applications for federal and state benefits available to older individuals.
- **Data reporting** is thorough and public. The program received **extra credit** because it includes demographic information about the people who apply for, are granted, and are denied Geriatric Conditional Release.

LOW MARK

- **Procedure:** The Parole Board conducts an initial assessment prior to the formal review and can deny an individual at that time, ending the process. We think that two-step review is redundant and, because it does not rely on information gained during the formal review, potentially misses information important to making the Geriatric Conditional Release decision.