

Compassionate Release Report Card • October 2022

West Virginia

Overall Grade for West Virginia

Total Grade

32 /100

Letter Grade

F

Program Grades

	Total Grade	Letter Grade
Executive Clemency Due to a Life-Threatening Medical Condition	21/100	F
Medical Respite	42/100	F

Executive Clemency Due to a Life-Threatening Medical Condition

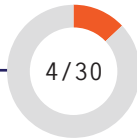
Total Grade

21 /100

Letter Grade

F

Eligibility Criteria



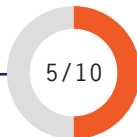
0/10 Clearly set out with understandable and measurable standards.

0/10 Generous or not unduly restrictive.

4/10 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

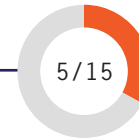


5/5 Documentation and assessment are straightforward, lacking multiple or redundant reviews and authorizations.

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

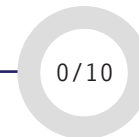


0/5 UTD* Clinical and other staff can identify potentially eligible individuals and initiate the process.

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

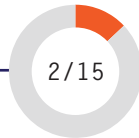


0/5 Agencies provide comprehensive release planning.

× **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

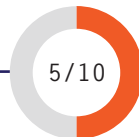


2/5 Agency rules exist for all stages of identification, initiation, assessment, and decision-making.

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



5/5 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**

* 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

The Governor granted only one Executive Clemency from 2010 to 2020. It is not known whether that grant was made due to a life-threatening medical condition.

High and Low Marks

HIGH MARK

- The Governor must submit an **annual report** to the West Virginia Legislature stating how many people receive Executive Clemency and the grounds for any grants.

LOW MARKS

- **Overall**, West Virginia Executive Clemency Due to a Life-Threatening Medical Condition **flunks**. While there is some policy governing executive clemency, there is only one mention of the life-threatening medical conditions prong in the Parole Board guidelines. Otherwise, only skeletal guidance exists to implement executive clemency, and no guidance exists to implement clemency due to life-threatening medical conditions. The standard executive clemency information page does not even mention life-threatening medical condition as a ground for clemency.
- No definitions or standards explain the "life-threatening medical condition" **eligibility criterion**. People serving a life sentence are categorically excluded until having served a set amount of time in custody.
- While incarcerated people or their supporters may **initiate the process**, they must call the Governor's office to request a paper application.
- In addition, the program fails to provide **release planning** and **data reporting** and fails every other measure.

Medical Respite

Total Grade

42

 /100

Letter Grade

F

Eligibility Criteria

10/30

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

0/10 Generous or not unduly restrictive.

5/10 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**

Engaging the Process

3/15

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

3/5 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.

Agency Policy Design

11/15

3/5 Agency rules exist for all stages of identification, initiation, assessment, and decision-making.

5/5 Agency rules are consistent with and/or complement the statute, are up to date, and internally consistent.

3/5 Rules provide clear guidance to reviewers and decision-makers about steps to take and standards to apply.

Procedures

8/10

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

3/5 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**

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.

Data Collection and Public Reporting

5/10

0/5 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.

Right to Counsel and Appeals

5/10

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

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

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**

The Numbers

The Division of Corrections and Rehabilitation's annual reports stated that no one was granted Medical Respite in 2019 and 2020.

High and Low Marks

HIGH MARKS

- West Virginia's Medical Respite program received relatively high grades for **procedures** it uses for the program. Actors are guided by a set of steps to take in the assessment and referral process. Most, though not all of the tasks, must be completed within a set time period.
- Individuals denied Medical Respite may **reapply**, but if the applicant's condition has not materially changed, the Warden may, after consulting with the health care provider, summarily recommend denial to the Governor.

LOW MARKS

- Medical Respite failed to pass in the **eligibility criteria** category. People who are terminally ill may be considered but only if they are within 120 days of death, one of the shortest time frames in the country. People who have an "extremely serious medical condition" are also eligible, but that term is undefined. That only one categorical exclusion for this end-of-life program exists is commendable. That would have triggered a higher grade except that the program prohibits "young people" incarcerated at the Anthony Correctional Center from respite eligibility. In FAMM's view, 120 days is not enough time to initiate and complete the evaluation and decision-making steps. The exclusion of young people is confounding and cruel.
- West Virginia received middling marks for **policy design**. While the state earns credit because it has clearly laid out the assessment and referral processes, the grades in this area suffer because the program lacks standards that wardens apply in making a recommendation to the Governor, and nothing exists to guide the Governor's decision. (The state also received a free pass regarding whether the statute rules are consistent because the state does not have a statute in this area).
- The Division of Corrections and Rehabilitation does not appear to provide release planning support, even though a **release plan** is a prerequisite to Medical Respite. The only eligible people are those gravely ill and whose death is imminent. Incarcerated people near the end of life and the gravely ill will likely be unable to formulate a plan on their own and thus may be denied Medical Respite.