



January 24, 2024

Vermont House of Representatives
Committee on Corrections and Institutions
115 State Street
Montpelier, VT 05633-5301

Via electronic delivery

Re: Support for House Bill 408

Dear Chair Emmons, Vice Chair Troiano, and members of the Committee on Corrections and Institutions:

Thank you for the opportunity to support [House Bill \(H.\) 408](#), a bill that would improve Vermont’s compassionate release programs. I write on behalf of [FAMM](#), a national non-partisan sentencing and corrections advocacy organization. We unite current and formerly incarcerated people, their families and loved ones, and a diverse network of concerned citizens working to improve our system of justice.

For more than two decades, FAMM has been a leading voice for measures allowing for the safe release of medically vulnerable, aging, and dying individuals from our nation’s prisons. Our justice system incarcerates people to deter crimes, punish those who commit them, protect the public, and rehabilitate those who will return to the community one day. FAMM believes there should be meaningful mechanisms for release when continued incarceration no longer advances these purposes. At a minimum, we should provide consideration for release to people who are dying, aging, and too debilitated to offend, too compromised to benefit from rehabilitation, or too impaired to be aware they are being punished.

Since 2018, FAMM has published comprehensive research into state compassionate release programs.¹ We maintain [a set of memos on our website that document every program in the 50 states and the District of Columbia](#).² For each, we describe eligibility criteria, application requirements, documentation, and decision-making, as well as post-decision and post-release considerations.

¹ While we use the term “compassionate release” to describe this authority, we are aware that many jurisdictions, including Maryland, have different names for programs that enable early release for qualifying prisoners. Because of what we have learned of the insurmountable barriers to early release programs encountered by many sick and dying prisoners, we believe every program could benefit from taking a compassion-based look at what it means for the elderly, ill, and dying to go through the process. We call these programs “compassionate release” so that the human experience is foremost in our minds and those of policy makers.

² FAMM, Compassionate Release: State Memos (Dec. 2021), <https://famm.org/our-work/compassionate-release/everywhere-and-nowhere/#memos>.



1100 H Street NW, Suite 1000 • Washington, D.C. 20005



(202) 822-6700



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In 2022, we produced compassionate release report cards for every state.³ We evaluated Vermont's Medical Parole and Medical Furlough programs, which received grades of 64/100 and 59/100, respectively.⁴ One thing that contributed to the poor grade for Medical Parole is that the Parole Board granted no Medical Parole applications in 2019 and 2020 because the Department referred no one for Medical Parole. Vermont's combined grade was near failing: D-. We urge you to review the Report Card, which is attached.

Our research and analysis inform our support of H. 408. It contains needed reforms. The legislation would improve safe pathways to release for elderly, terminally ill, and those with certain serious medical conditions. These important changes, such as clear and straightforward eligibility requirements and a right to appeal, align with many that FAIMM identified as necessary to overcome current barriers to compassionate release and outlined in our comprehensive report, "Everywhere and Nowhere: Compassionate Release in the States."⁵

Data show that elderly, ill people in prison are the most expensive to incarcerate but have the lowest recidivism rates.⁶ Keeping these people in prison is a high-cost, low-value return for taxpayers and reduces public safety by wasting resources that could be spent elsewhere to prevent crime happening now. It is time for Vermont to make these changes.

We commend this bill to the committee because we believe it will make possible the efficient and robust use of compassionate release and medical parole. FAIMM is happy to support H. 408 and stands ready and willing to work with you on this legislation. We also encourage you to visit with people who may benefit from this legislation, as well as people serving extreme sentences in Vermont prisons.⁷

Thank you for considering our views. Please contact me at (267) 644-8964 or bwidenhouse@famm.org with questions or to discuss this matter further.

Respectfully,

/s/ Bryan Widenhouse

Bryan Widenhouse
Senior Policy Associate
FAIMM

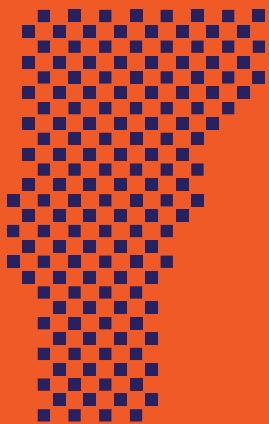
³ FAIMM, State Compassionate Release Report Cards (Oct. 2022), <https://famm.org/our-work/compassionate-release/everywhere-and-nowhere/#memos>.

⁴ FAIMM, Vermont State Compassionate Release Report Card (Oct. 2022), <https://famm.org/wp-content/uploads/vt-report-card-final.pdf>.

⁵ Mary Price, Everywhere and Nowhere: Compassionate Release in the States (2018), <https://famm.org/wp-content/uploads/Exec-Summary-Report.pdf>.

⁶ FAIMM, "The Older you Get: Why Incarcerating the Elderly Makes us Less Safe," <https://famm.org/wp-content/uploads/Aging-out-of-crime-FINAL.pdf>.

⁷ FAIMM #VisitAPrison campaign, <https://famm.org/visitaprison/>.



Compassionate Release Report Card • October 2022

Vermont

Overall Grade for Vermont

Total Grade

62 /100

Letter Grade

D-

Program Grades

	Total Grade	Letter Grade
Medical Parole	64/100	D
Medical Furlough	59/100	F

Find all compassionate release resources on FAMM's site →

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



Medical Parole

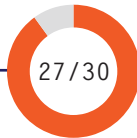
Total Grade

64 /100

Letter Grade

D

Eligibility Criteria



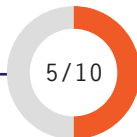
7/10 Clearly set out with understandable and measurable standards.

5/10 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. **+5**

Procedures

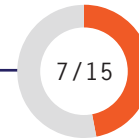


5/5 Documentation and assessment are straightforward, lacking multiple or redundant reviews and authorizations.

0/5 Time frames for completing review and/or decision-making exist and are designed to keep the process moving along.

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

Engaging the Process

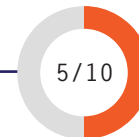


5/5 Clinical and other staff can identify potentially eligible individuals and initiate the process.

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



5/5 Agencies provide comprehensive release planning.

x Extra credit: Release planning includes helping the incarcerated person apply for benefits prior to release, including housing, Medicaid, Medicare, and/or veterans benefits. **0**

0/5 Release planning begins early in the process.

Agency Policy Design



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

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

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

Data Collection and Public Reporting



0/5 Agencies are obliged to gather, compile, and report release data to legislature.

0/5 Reporting is made available to the public via annual reports or other means.

10/10

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 Individuals have the right to reapply should conditions change.

+ **Extra credit:** Revocations are not used to return people to prison because their condition improves or goes into remission or because the individual outlives the prognosis. **+5**



Overall Extra Credit

+5 Vermont is among the few states that mandate routine reassessments of individuals denied compassionate release. The facility's health services staff is to notify the Director of Nursing for the Department of Corrections of any change in an individual's condition that would warrant a review. In addition, the Director of Nursing must review all denied applicants every six months to determine whether their conditions change such that they become eligible for Medical Parole. Very few states include this feature, which we think essential to ensure individuals whose conditions may worsen do not fall through the cracks.



Overall Penalty

-10 Vermont's well-designed Medical Parole program looks better on paper than it operates in practice. The Parole Board granted no Medical Parole applications in 2019 or 2020 because the Department referred no one for Medical Parole.

The Numbers

Vermont does not publish Medical Parole statistics. The Board responded to FAMM's request for information that no one received Medical Parole in 2019 or 2020.

High and Low Marks

HIGH MARKS

- The Medical Parole program's lackluster grades for clarity and generosity of **eligibility criteria** are balanced by the fact that the program excludes no one from consideration, has a generous definition of terminal illness, and provides examples of some qualifying conditions.
- Medical Parole **policies** exist for all stages; implement the statute; and provide clear guidance to system actors about roles, steps and procedures, and standards to apply.
- Documentation and review **procedures** are straightforward and relatively streamlined.
- **Right to counsel:** Legal counsel may appear before the Parole Board, and it appears that individuals are not subject to revocation should their medical condition improve while on Medical Parole.

LOW MARKS

- We found that some **eligibility criteria** lacked clarity and that the examples the program provides suggest a rather limited view of who qualifies for Medical Parole. For example, one eligibility category covers people with a "serious," incurable medical condition from which the person will not recover. Examples include completely disabled individuals who cannot provide any self-care and who are totally confined to a bed or chair or those with limited self-care abilities who are confined to a bed or chair more than 50% of their waking hours. We marked the program down because the examples suggest a much narrower application than the criteria would suggest.
- The program provides for comprehensive **release planning**, but planning does not begin in earnest until the Board grants parole, at which time Department staff begin care coordination and release planning. The Board's policy states that it must be satisfied that the individual will receive proper medical care outside the correctional facility. FAMM believes that release planning should begin early enough in the process to ensure the plan is ready in time for the paroled individual to be released promptly.

Medical Furlough

Total Grade

59 /100

Letter Grade

F

Eligibility Criteria

27/30

7/10 Clearly set out with understandable and measurable standards.

5/10 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. **+5**

Procedures

5/10

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.

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

Engaging the Process

7/15

5/5 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

5/10

5/5 Agencies provide comprehensive release planning.

x Extra credit: Release planning includes helping the incarcerated person apply for benefits prior to release, including housing, Medicaid, Medicare, and/or veterans benefits. **0**

0/5 Release planning begins early in the process.

Agency Policy Design

15/15

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

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

5/5 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

5/10

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

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

0/5 Individuals have the right to reapply should conditions change.

+ **Extra credit:** Revocations are not used to return people to prison because their condition improves or goes into remission or because the individual outlives the prognosis. **+5**



Overall Extra Credit

+5 Vermont is among the few states that mandate routine reassessments of individuals denied compassionate release. The correctional facility's health services staff is to notify the Director of Nursing for the Department of Corrections of any change in an individual's condition that would warrant a review. In addition, the Director of Nursing must review all denied applicants every six months to determine whether their conditions change such that they become eligible for Medical Furlough. Very few states include this feature, which FAMM thinks essential to ensure individuals whose conditions may worsen do not fall through the cracks.



Overall Penalty

-10 Vermont's well-designed Medical Furlough authority, like its Medical Parole counterpart, looks better on paper than it operates in practice. The Department granted no Medical Furloughs in 2019 or 2020.

The Numbers

Vermont does not publish Medical Furlough statistics. The Department of Corrections responded to FAMM's request for information, stating that no one received Medical Furlough in 2019 or 2020. It was unable to tell FAMM how many people had been referred for Medical Furlough, explaining that those referrals are made on a case-by-case basis and that it does not keep records.

* 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.

High and Low Marks

HIGH MARKS

- The Medical Furlough program's lackluster grades for clarity and generosity of Medical Furlough **eligibility criteria** are offset by the fact that the program excludes no one from consideration, has a generous definition of terminal illness, and provides examples of some qualifying conditions.
- Medical Furlough **policies** exist for all stages; implement the statute; and provide clear guidance to system actors about roles, steps and procedures, and standards to apply.
- Documentation and review **procedures** are straightforward and relatively streamlined.
- It appears that individuals are not subject to **revocation** should their medical condition improve while on Medical Furlough.

LOW MARKS

- FAMM found that some **eligibility criteria** lack clarity and that the examples the program provides suggest a rather limited view of who qualifies for Medical Furlough. For example, one eligibility category covers people with a "serious," incurable medical condition from which the person will not recover. Examples include completely disabled individuals who cannot provide any self-care and who are totally confined to a bed or chair or those with limited self-care abilities who are confined to a bed or chair more than 50% of their waking hours. We marked the program down because the examples demonstrate a much narrower application than the criteria would suggest.
- The program provides for comprehensive **release planning**, but planning does not begin until the Commissioner approves furlough. FAMM believes discharge planning should begin early in the process to ensure the plan is ready in time for the furloughed individual to be released promptly.