

Reimagining Compassionate Release: A Lexicon for Change

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Introduction

Despite recent reforms,¹ the United States (US) continues to operate an overburdened criminal justice system, with an incarcerated population that is steadily growing older and sicker, generating substantial medical and custodial costs.² Compassionate release can help alleviate this problem and exists in nearly every US state.³ These provisions allow for the early release of individuals who are terminally or seriously ill, elderly, or otherwise facing extraordinary and compelling circumstances.⁴ Yet, despite providing a targeted mechanism for releasing individuals who are both expensive to incarcerate and who likely pose minimal risk to public safety, compassionate release remains widely regarded as significantly underutilized.⁵

Existing scholarship provides valuable insights into compassionate release⁶ and, more recently, has expanded in response to the First Step Act and COVID-19.⁷ These studies show that eligibility categories have broadened over time, but far less is understood about how these provisions function in practice.⁸ The scholarship is divided between narrow, jurisdiction-specific case studies and broad national surveys,⁹ with little analysis of the institutional and procedural architecture that determines how compassionate release works in practice.

This article addresses that gap. Part I draws on the first comprehensive historical catalogue of every known state and federal compassionate release provision (CRP) to reconstruct the development of compassionate release from the 1960s to the present, identifying four eras that correspond to broader trends in American penal policy. Part II then identifies and analyzes the “implementation gap,” showing how important reform recommendations, like those issued by *Families Against Mandatory Minimums*, can be limited in their application by jurisdictional differences and nuances.

To resolve this problem, in Part III, the authors introduce the *Compassionate Release Lexicon* (‘the Lexicon’), a new analytic framework that identifies four core functional roles present in every CRP: the Initiator, the Processor, the Decision-Maker, and the Ultimate Decision-Maker.

¹ See First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194 (codified in scattered sections of 18 & 34 U.S.C.) (bipartisan federal criminal justice reform including sentencing reforms, expanded earned time credits, and mechanisms to reduce the federal prison population). Reforms have also been undertaken at state-level. See generally, Christopher W. Dollar, *Policy Reforms of Justice Reinvestment: Differences Between a Sample of U.S. States’ Implementations*, 18 Soc. Compass (2024).

² Emily Widra, *The Aging Prison Population: Causes, Costs, and Consequences*, PRISON POL’Y INITIATIVE (Aug. 2, 2023), <https://www.prisonpolicy.org/blog/2023/08/02/aging>.

³ See Families Against Mandatory Minimums, *Compassionate Release: Your State’s Laws*, <https://famm.org/our-work/second-chances/compassionate-release-your-states-laws> (last visited Dec. 12, 2025) (Iowa’s profile notes that it does not possess a compassionate release provision).

⁴ Sarah L. Cooper, *A Case for Broadening Arizona’s Approach to Compassionate Release*, 13 L. J. SOC. JUST. 3, 4.

⁵ Mary Price, *Everywhere and Nowhere: Compassionate Release in the States* 13 (Dec. 2023), <https://famm.org/wp-content/uploads/2023/12/Exec-Summary-Report.pdf>.

⁶ See generally, Tom Nicklin, *Developing a Typology for Compassionate Release* 153-92 (Ph.D. dissertation, 2024) (on file with author) (providing an analysis of 13 studies on compassionate release and how they address eligibility, functionality, and purpose).

⁷ Colleen M. Berryessa, *Compassionate Release as a “Right” in the Age of COVID-19*, 20 AM. J. BIOETH. 185 (2020) (discussing compassionate release and COVID-19 in U.S. prisons); Helen Mooney et al., *Compassionate Release and COVID-19: Analyzing Inconsistent Applications of the First Step Act by Federal Courts*, 53 J.L. MED. & ETHICS 426 (2025) (discussing the First Step Act 2018 and its impact).

⁸ Nicklin, *supra* note 6, at 159-61 (showing how eligibility evolved over time).

⁹ *Id.* at 152.

The Lexicon provides a standardized vocabulary for describing how CRPs operate, regardless of jurisdictional variation in terminology or institutional design. By mapping each provision onto these functional roles, the Lexicon allows stakeholders to identify structural barriers, compare provisions across jurisdictions, and tailor reforms to the operational realities of each CRP. Part IV uses the Lexicon to conduct a jurisdiction-specific structural analysis of Washington’s *Extraordinary Medical Placement* (EMP) provision,¹⁰ demonstrating how functional mapping and administrative data can identify bottlenecks and guide targeted reforms. It then uses the Lexicon to compare Ohio’s *Judicial Release* provision¹¹ with the federal CRP,¹² both of which use the sentencing court to authorize release. Applying the Lexicon reveals significant differences between the functionality of these provisions, demonstrating how it can be used to both compare decision-making chains and guide jurisdictions on how they could share best practices.

Overall, this article concludes that compassionate release has historically served more as an administrative safety valve than as a policy grounded in compassion, and that its current underutilization is driven not just by statutory limits, but also institutional design and procedural bottlenecks. The authors argue that the Lexicon provides a method for diagnosing these problems and for enhancing the implementation of reforms that are sensitive to the diverse mechanisms and jurisdictional nuances through which compassionate release operates.

Part I: The Development of Compassionate Release in the United States

Scholarship on compassionate release has, until recently, provided only a limited understanding of its historical development in US.¹³ Most accounts begin with the 1984 federal provision¹⁴ enacted under the Comprehensive Crime Control Act,¹⁵ which empowered the sentencing court to reduce a sentence based on “extraordinary and compelling circumstances.”¹⁶ These historical overviews then tend to move directly to contemporary debates, overlooking the complex history that both preceded and followed that moment.¹⁷

Nicklin’s research provides an account of this history, revealing that numerous CRPs were enacted long before the 1984 statute and continued to be introduced in the years that followed. Some state frameworks date back as far as 1852,¹⁸ while the earliest examples of what can be termed “modern” compassionate release appeared in the 1960s.¹⁹ Through the creation of a comprehensive catalogue of statutory CRPs, documenting each provision from its enactment, and through each amendment to its present language, Nicklin was able to reconstruct a more

¹⁰ WASH. REV. CODE § 9.94A.728 (c)(i) (2025).

¹¹ Ohio Rev. Code Ann. § 2929.20 (LexisNexis 2024).

¹² 18 U.S.C. § 3582(c)(1)(A),

¹³ Jennifer E. James et al., *COVID-19 and the Reimaging of Compassionate Release*, 19 INT’L J. PRISONER HEALTH 20, 21-23 (2021).

¹⁴ 18 U.S.C. § 3582(c)(1)(A).

¹⁵ Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, 98 Stat. 1976 (1984).

¹⁶ 18 U.S.C. § 3582(c)(1)(A)(i).

¹⁷ James, *supra* note 13; Kevin Trowel, *Statutory Interpretation, the First Step Act and Compassionate Release*, 74 BAYLOR L. REV. 197 (2022) (cites as beginning through a 1976 federal CRP, but this provision contains no distinct “compassionate” eligibility criteria).

¹⁸ *Laws of Ohio: Published by Authority*, FREMONT WEEKLY FREEMAN, Mar. 13, 1852 (restating 1852 Ohio Laws 12).

¹⁹ For example, North Dakota’s CRP was enacted in 1963. 1963 N.D. Laws Ch. 124, 189; Delaware’s CRP was enacted in 1964. 54 Del. Laws 1105 (1964).

complete historical trajectory of compassionate release.²⁰ His analysis of this history identified four distinct “eras”, each corresponding to wider transformations in American penal philosophy and correctional practice. The following sub-sections explore each era in turn, detailing the relevant statutory reforms, policy pressures, and broader penal trends that contributed to the shifting function of compassionate release.

Era I: 1960s to 1980s – The Beginning of “Modern” Compassionate Release

The first era arose amid widespread calls to modernize American criminal law. Prior to the 1960s, most state codes were products of incremental amendment rather than systematic design, resulting in overlapping provisions and inconsistent sentencing structures that have been described as chaotic and “haphazard.”²¹ The American Law Institute (ALI) sought to introduce order through its 1962 Model Penal Code (MPC). The MPC became one of the most influential legal documents in twentieth-century American criminal justice,²² providing not only a new vocabulary for sentencing reform but also the earliest articulation of what would now be recognized as compassionate release.

Within the MPC, two sections are especially relevant. Section 304.4, “*Transfer for Treatment*,” authorized the correctional authority to remove prisoners from confinement to a medical institution if they required “treatment which the Department cannot [furnish].”²³ Section 304.9, titled “*Compassionate Leave; Pre-Parole Furlough*,” went further, empowering the Director of Corrections to permit a prisoner to “return home during what appears to be his [last illness].”²⁴ This provision self-identified as “compassionate,” suggesting it was justifying early release to some extent on humanitarian grounds.

Among the approximately 90 CRPs²⁵ now in effect across the US, the earliest date back to 1963 in North Dakota²⁶ and 1964 in Delaware,²⁷ each introduced as part of broad, comprehensive penal code reforms.²⁸ During this period, many states were engaged in comparable penal code revisions, frequently guided by model legislation, a pattern reflected clearly in Delaware’s adoption of MPC-derived language.²⁹ Delaware’s provision authorized release for prisoners suffering from “a physical disease or defect that cannot be properly treated in any institution in the Department of Correction,”³⁰ echoing the MPC’s clinical phrasing in §304.4, while omitting the word “compassionate” and the authorization to release prisoners under §304.9. Other states adopted comparable approaches. Minnesota’s CRP from 1978, for example, incorporated the principle that prisoners could be transferred for medical treatment outside correctional facilities

²⁰ See generally, Nicklin, *supra* note 6, at 42-87 (discussing the creation of a database recording every known CRP and amendment from 1963 to 2020).

²¹ Ronald L. Gainer, *Federal Criminal Code Reform: Past and Future*, 2 BUFFALO CRIM. L. REV. 45, 57 (1998).

²² Paul H. Robinson & Markus D. Dubber, *The American Model Penal Code: A Brief Overview*, 10 NEW CRIM. L. REV. 319, 326 (2007).

²³ AM. L. INSTITUTE, MODEL PENAL CODE § 304.4 (Proposed Official Draft) (1962).

²⁴ *Id.* at § 304.9.

²⁵ Nicklin, *supra* note 6, FN38 (identifying 87 CRPs, but also acknowledging that two other studies found 84 and 88, respectively).

²⁶ North Dakota’s provision for “emergency parole” in 1963 does not appear to have been derived from the MPC. Nicklin, *supra* note 6, at 100-01.

²⁷ 1963 N.D. Laws Ch. 124, 189.

²⁸ Nicklin, *supra* note 6, 100-02.

²⁹ 54 Del. Laws 1105 (1964).

³⁰ DEL. CODE ANN. tit. 11, § 4346 (1964).

but, as in Delaware, excluded any reference to compassion.³¹ The influence of the MPC was extensive: within two decades of its publication in 1962, thirty-four states had enacted reforms to their criminal codes that drew, at least in part, on its structure or language.³² Yet, even where the MPC was influential, its most explicitly compassionate provisions were seldom replicated.³³

In 1971, the report of the Brown Commission, established by the National Commission on Reform of Federal Criminal Laws, released a report reflecting a federal effort to align with reforms already underway.³⁴ Section 3402(1) of this “Federal Model Criminal Code (FMCC)” authorized sentence modification in cases involving “extraordinary circumstances.”³⁵ The phrasing appears to be deliberate and neutral, allowing for flexibility without inviting moral interpretation. Following the FMCC, the phrase “extraordinary circumstances” appeared in two state CRPs³⁶ and the term “extraordinary,” as it applies to circumstances for compassionate release, appeared in four other CRPs.³⁷ Notably, however, the FMCC went against the criminal justice “law and order” *zeitgeist* that was proliferating at the time, including a skeptical view of the death penalty,³⁸ and proposals to classify the possession of marijuana to an infraction that carried only a ‘modest fine’.³⁹ Though it was critical of the contemporary indeterminate sentencing practices,⁴⁰ the FMCC was quietly rejected in favor of a more punitive approach.⁴¹ At that time, President Richard Nixon had already begun laying the groundwork for a more punitive approach to sentencing, with a particular focus on his ‘war on drugs.’ The Controlled Substances Act (1970) classified marijuana as a Schedule I drug, aligning it, conceptually and legally, with heroin and lysergic acid diethylamide (LSD).⁴² Then, in 1971, the same year as the FMCC was published, Nixon declared that drugs were “public enemy number one”⁴³ and began constructing a more expansive federal law enforcement regime.⁴⁴ The Nixon Administration consistently advocated harsher sentencing,⁴⁵ greater federal prosecutorial power,⁴⁶ and the reinstatement of capital punishment after *Furman*.⁴⁷ Taken together, these developments suggest that the FMCC’s more moderate and reform-oriented proposals ran

³¹ Minn. Stat. ch. 244.06 (1978).

³² Robinson & Dubber, *supra* note 22.

³³ Nicklin’s research identifies relatively few CRPs enacted in the 1960s and 1970s. Nicklin, *supra* note 6, at 62.

³⁴ NAT’L COMM’N ON REFORM OF FED. CRIM. L., FINAL REPORT OF THE NATIONAL COMMISSION ON REFORM OF FEDERAL CRIMINAL LAW (1971) [hereinafter ‘FMCC’].

³⁵ *Id.* at § 3402(1).

³⁶ The term “extraordinary circumstances” appears in Washington’s *Extraordinary Release* provision (enacted in 1981), and in Wisconsin’s *Parole (for Extraordinary Circumstances)* provision (enacted in 1983).

³⁷ Minnesota (“extraordinary discharge”) (enacted 1978); US Federal (“extraordinary and compelling circumstances”) (enacted 1984); Washington (“extraordinary medical placement”) (enacted 1999); Wisconsin’s Modification of Sentence (“extraordinary health condition”) (enacted 2001).

³⁸ FMCC, *supra* note 34, at 310.

³⁹ Note that, under this proposal, first-time possession for marijuana would have been unpunishable by jail time. FMCC, *supra* note 22, at 254-55. However, under the current federal code, simple possession of marijuana carries a sentence of up to 1-year in prison and a minimum of a \$1,000 fine. 21 U.S.C. § 844.

⁴⁰ FMCC, *supra* note 34, at 285.

⁴¹ Two bills were introduced in the U.S. Senate in 1973, and both were unsuccessful. *Criminal Code Reform Act*, S. 1400, 93d Cong. (1973). *Criminal Justice Codification, Revision, and Reform Act of 1973*, S. 1, 93d Cong. (1973).

⁴² See Controlled Substances Act, Pub. L. No. 91-513, § 202(c), 84 Stat. 1236, 1249 (1970) (codified as amended at 21 U.S.C. § 812(c)).

⁴³ President Richard Nixon, Remarks About an Intensified Program for Drug Abuse Prevention and Control (June 17, 1971).

⁴⁴ *Id.* (announcing expanded federal enforcement, prosecution, and inter-agency coordination on matters relating to drugs).

⁴⁵ See Comprehensive Crime Control proposals advanced by the Nixon Administration, e.g., S. 1, 93d Cong. (1973) (seeking expanded federal criminal jurisdiction, increased penalties, and reinstatement of capital punishment).

⁴⁶ *Id.*

⁴⁷ 408 U.S. 238 (1972).

against the grain of prevailing political priorities at the time, perhaps explaining why it was ultimately set aside.

However, the FMCC was not the final attempt to reform the federal criminal code. In 1976 a group of scholars, students, and legal professionals assembled at Yale University for a series of workshops to develop a new, determinate model criminal code for the US federal jurisdiction.⁴⁸ Notable participants included Marvin Frankel, the federal judge whose influential book *Criminal Sentences: Law Without Order* (1973)⁴⁹ exposed the inequities of indeterminate sentencing and its role in perpetuating racial disparities.⁵⁰ The group also included Maurice H. Sigler,⁵¹ then chairperson of the U.S. Board of Parole, which was itself pursuing reforms to better align with the evolving federal justice framework.⁵² These workshops produced what is referred to in this research as the “Yale Model Code” (YMC),⁵³ a determinate sentencing model that ultimately informed significant portions of the 1984 Sentencing Reform Act,⁵⁴ including the creation of the current federal CRP.⁵⁵

The YMC has a direct terminological and functional connection to the 1984 federal CRP as well as other early state CRPs. The 1976 YMC provision states:

“Under extraordinary circumstances, involving catastrophic illness or hardship on the part of the prisoner or his immediate family or other highly compelling circumstances, the Director of the Bureau of Prisons may petition the court which sentenced the prisoner to vacate sentence of imprisonment and to order his release on such conditions as the court may consider appropriate. The Director’s failure to take such action shall be reviewable only by the attorney general or his delegate.”⁵⁶

The YMC’s reference to “extraordinary circumstances” and “highly compelling circumstances” appears to have provided a template for multiple state CRPs enacted over the following decade. For instance, Minnesota’s 1978 provision authorized release in cases of “serious health problems, senility, advanced age or other extraordinary circumstances.”⁵⁷ Washington’s 1981 statute likewise permitted “extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances.”⁵⁸ Wisconsin followed in 1983 with a similar use of the term “extraordinary circumstances.”⁵⁹ Finally, in 1984, the federal government codified its own CRP, allowing release for “extraordinary and compelling reasons,”⁶⁰ seemingly blending the YMC’s phrasing of “extraordinary circumstances” and “highly compelling circumstances.”

⁴⁸ PIERCE O’DONNELL, MICHAEL J. CHURGIN & DENNIS E. CURTIS, TOWARD A JUST AND EFFECTIVE SENTENCING SYSTEM: AGENDA FOR LEGISLATIVE REFORM (1977) (this work contains the output of the workshops and includes the proposed model code).

⁴⁹ MARVIN E. FRANKEL, CRIMINAL SENTENCING: LAW WITHOUT ORDER (1972).

⁵⁰ See *id.* at 86-102.

⁵¹ O’DONNELL, CHURGIN & CURTIS, *supra* note 48, at xii.

⁵² William J. Genego et al., *Parole Release Decisionmaking and the Sentencing*, 84 YALE L.J. 810, 822-24 (1975) (noting that the U.S. Parole Board had developed its own guideline system to encourage consistency as part of a pilot project in 1972).

⁵³ This reference is not a common expression, but an abbreviation used by Nicklin. See Nicklin, *supra* note 6, at 119.

⁵⁴ Sentencing Reform Act of 1984, Pub. L. No. 98-473, tit. II, ch. II, 98 Stat. 1987 (1984).

⁵⁵ 18 U.S.C. § 3582(c)(1)(A).

⁵⁶ O’DONNELL, CHURGIN & CURTIS, *supra* note 48 at 125 (at § 3824 (c)).

⁵⁷ MINN. STAT. § 244.06 (1978) (repealed in 1997).

⁵⁸ WASH. REV. CODE § 9.94A.728 (d) (1981).

⁵⁹ WIS. STAT. § 56.06 (1983) (codified to § 304.06 in 1989).

⁶⁰ 18 U.S.C. § 3582(c)(1)(A).

The YMC also introduced the process of the Director of the Bureau of Prisons referring the prisoner to the sentencing court for compassionate release.⁶¹ This feature does not appear in state CRPs prior to the publishing of the YMC, but it does appear in a federal release provision enacted in 1976.⁶² This structural design reflects the YMC's lineage, particularly its connection to the work of Marvin Frankel, whose critiques of indeterminate sentencing argued against delegating excessive authority to parole boards.⁶³ Frankel advocated for judicial retention of sentencing power (subject to statutory guidelines) to promote consistency, transparency, and predictability in sentencing outcomes.⁶⁴ The YMC itself articulated a rationale for preserving some, but limited judicial flexibility, explaining that:

“The abolition of parole could create an unfortunate situation in which the postconviction justice system would be stripped of all flexibility to deal with truly unusual situations in which release is desirable [...].”⁶⁵

This context suggests that the YMC's release mechanism was conceived as an exceptional and narrowly confined remedy, reserved for “extraordinary” cases—an origin that may help explain the federal CRP's perceived underutilization, given its grounding in the YMC.⁶⁶ Analysis of this era shows that many early CRPs enacted between the 1960s and 1980s avoided the explicit language of “compassion,” and emerged primarily within broader penal reform packages that were closely tied to model legislation. This suggests that they were not necessarily intended to be compassionate, but rather to provide statutory fail-safe mechanisms⁶⁷ designed to preserve limited flexibility within increasingly determinate sentencing systems.

Era II: 1990s to 2000s – The Proliferation and Transformation of Compassionate Release Provisions Amidst the “Tough-on-Crime” Movement

The second era, spanning the 1990s through the early 2000s, redefined compassionate release within the punitive sentencing approaches being implemented across the US during this period. The abolition of discretionary parole at the federal level and the emergence of mandatory minimum sentences and truth-in-sentencing (TIS) laws reflected a new approach towards punishment.⁶⁸ However, despite this, the era also represents the most active period for enactments of CRPs in US history. From 1963 to 1989, 17 CRPs were enacted across the US, and by the end of 1999, that figure had increased to 43 CRPs.⁶⁹

⁶¹ O'DONNELL, CHURGIN & CURTIS, *supra* note 48 at 125 (at § 3824 (c)).

⁶² 18 U.S.C. § 4025(g) (repealed by the Sentencing Reform Act 1984). This provision enables the Director of the Bureau of Prisons to submit a motion to the sentencing court, who can then reduce the prisoner's minimum term to time served. Though this does not contain any reference to medical or “extraordinary” circumstances, note that the Code of Federal Regulations paired this with the later 1984 federal CRP. 28 C.F.R. §571.62 (1994).

⁶³ FRANKEL, *supra* note 49, at 82-93.

⁶⁴ *Id.*

⁶⁵ O'DONNELL, CHURGIN & CURTIS, *supra* note 48 at 71.

⁶⁶ William Berry III, *Extraordinary and Compelling: A Re-Examination of the Justifications for Compassionate Release*, 68 MD. L. REV. 850, 868 (2009) (revealing that an average of 21 federal prisoners per year were released between 1990 and 2000, representing around 0.01% of federal prisoners).

⁶⁷ The descriptor “fail-safe mechanism” is also directly employed by the American Bar Association's Criminal Justice Standards when outlining the rationale for their model code's CRP. ABA STANDARDS FOR CRIMINAL JUSTICE 235-36 (3d ed. 1994).

⁶⁸ Nicklin, *supra* note 6, at 97-98.

⁶⁹ *Id.* at 62.

The progression toward harsher sentencing policies was reinforced by the federal government's TIS Grant Program, introduced under the Violent Crime Control and Law Enforcement Act of 1994.⁷⁰ These grants encouraged states to reduce or eliminate parole and other early release mechanisms.⁷¹ Eligibility for TIS grants required that prisoners serve most, if not all, of their imposed sentences.⁷² The program, which operated between 1996 and 2001, authorized grants to states to “construct, develop, expand, modify, operate, or improve correctional facilities ... [to] ensure that prison cell space is available for the confinement of violent offenders, and to implement truth-in-sentencing laws for sentencing violent offenders.”⁷³ In effect, states that adopted TIS laws received grants to expand prison capacity,⁷⁴ reflecting both a political commitment and infrastructural investment in longer periods of incarceration.

Against this backdrop, the enactment of new CRPs during the same period appears paradoxical. Yet their introduction likely reflects a pragmatic response to the demands created by punitive sentencing regimes. As prison populations expanded, states faced an aging and increasingly infirm population.⁷⁵ The escalating costs of caring for these prisoners led policymakers in some jurisdictions—including Texas, where former Comptroller John Sharp's *Breaking the Mold* (1991) initiative explicitly identified geriatric release as a cost-saving reform—to reevaluate the fiscal rationality of continued confinement.⁷⁶ CRPs thus provided a narrowly tailored mechanism to manage exceptional cases, typically those involving prisoners whose serious medical conditions rendered them low risk, without undermining the prevailing tough-on-crime narrative. In this sense, these provisions functioned less as humanitarian reforms, but rather as administrative *fail-safe mechanisms*. The term “fail-safe mechanism” was directly employed in the American Bar Association's (ABA) *Criminal Justice Standards* (1994), which used the phrase to justify maintaining an option for an early release provision when “[...] new factual information, perhaps related to an aggravating or mitigating factor, [develops] subsequent to sentencing that alters materially the information base on which sentence was imposed [...]”⁷⁷ This provided a narrow exception within their proposed sentencing framework that was designed to reduce sentencing disparities through a more inflexible “presumptive disposition” approach.⁷⁸

Although the CRPs enacted in the 1990s retained the same restrictive character as their predecessors from the 1960s to 1980s, the context had shifted: rapidly expanding prison

⁷⁰ Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (codified as amended in scattered sections of 8, 16, 18, 28, and 42 U.S.C.).

⁷¹ Violent Crime Control and Law Enforcement Act of 1994, Title II, Subtitle A (Pub. L. 103-322).

⁷² *Id.* at Sec. 20101.

⁷³ *Id.* at (a).

⁷⁴ The grants could be given to states “[...] to construct, develop, expand, modify, operate, or improve correctional facilities, including boot camp facilities and other alternative correctional facilities that can free conventional prison space for the confinement of violent offenders [...]” *Id.*

⁷⁵ E. Ann Carson & Elizabeth Anderson, U.S. Dep’t of Just., Bureau of Just. Stat., *Aging of the State Prison Population, 1993–2013* 1 (2016).

⁷⁶ A REPORT FROM THE TEXAS PERFORMANCE REVIEW, *BREAKING THE MOLD: NEW WAYS TO GOVERN TEXAS* (1991); Philip A. Etheridge & Thomas G. White, *The Use of Medically Recommended Intensive Supervision (Medical Parole) in Texas*, 21 J. CORR. HEALTH CARE 375 (2015).

⁷⁷ American Bar Association, *ABA Standards for Criminal Justice: Sentencing* 235 (3d ed. 1994), available at https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/sentencing.pdf. The ABA's influence on statutory CRPs is discussed further in Nicklin, *supra* note 6, at 124–28.

⁷⁸ The ABA's *Criminal Justice Standards* envision an “intermediate function” of sentencing that directs judges to a “presumptive disposition for an ‘ordinary’ offense committed by an ‘ordinary’ offender,” with the aim of reducing unwarranted and inequitable disparities — a framework that inherently restricts wholly open judicial discretion in favor of more structured outcomes. American Bar Association, *supra* note 77, at xxii.

populations meant that these provisions now operated less as exceptional safeguards (“fail-safes”) and more as structural pressure-release mechanisms (“safety-valves”).⁷⁹ Furthermore, a conceptual shift can also be seen through the changes in decision-making processes. Nicklin’s research shows that, in the context of Geriatric Compassionate Release Provisions,⁸⁰ the earliest provisions from the 1960s to 1980s were most commonly authorized through executive clemency, whereas the 1990s saw a move to more administrative and parole-based mechanisms—possibly reflecting the need to accommodate increasing numbers of eligible individuals.⁸¹

Several state reforms from the 1990s illustrate this dual dynamic, in which jurisdictions simultaneously adopted more restrictive sentencing regimes while embedding narrowly tailored compassionate release provisions as institutional safety valves. Virginia’s 1994 sentencing reform package provides a clear example of this seemingly paradoxical introduction of a CRP ‘safety valve’ alongside restrictive TIS reforms. In 1994, Virginia enacted their TIS laws, which abolished discretionary parole, imposed an eighty-five percent time-served requirement, and established a Sentencing Commission to oversee the state’s guidelines system, alongside the creation of several diversion programs for nonviolent offenders.⁸² Within this same legislative package, Virginia introduced the *Conditional Release of Geriatric Prisoners* provision, authorizing the early release of prisoners aged sixty-five who had served at least five years, or those aged sixty who had served at least ten years.⁸³ A further example can be seen in New Jersey, where the 1997 No Early Release Act (NERA) required violent offenders to serve eighty-five percent of their sentence before parole eligibility.⁸⁴ In that same year, New Jersey established a medical parole provision enabling the early release of prisoners who were terminally ill and posed a reduced threat to public safety.⁸⁵ Other states adopted comparable CRPs contemporaneously with their TIS legislation,⁸⁶ suggesting that even as jurisdictions embraced harsher sentencing, they continued to preserve narrow exceptions to address elderly and seriously ill prisoners.

Importantly, the wave of CRP enactments in the 1990s may also help explain why compassionate release remains generally underutilized. For example, Nicklin identified that ten of the 42 CRPs (23.81%) established between 1963 and 1999 received no amendments as of 2020.⁸⁷ As a result, these provisions essentially remain in their original form, reflecting the more punitive climate in which they were created.

⁷⁹ Nicklin, *supra* note 6, at 187-88.

⁸⁰ Referring to CRPs that cater to elderly prisoners as a specific eligibility pathway. Megan Horner, *Broken and Underutilized: Understanding Compassionate Release Programs for Older Adult Prisoners*, 44 ABA BIFOCAL 48 (Jan./Feb. 2023), available at https://www.americanbar.org/groups/law_aging/publications/bifocal/vol44/bifocal-vol-44-issue3/broken-and-underutilized-understanding-compassionate-release.

⁸¹ Nicklin, *supra* note 6, at 260.

⁸² Richard Kern, *Sentence Reform in Virginia*, 8 FED. SENT’G REP. 84 (1995).

⁸³ VA CODE ANN. § 53.1-40.01 (2020).

⁸⁴ Courtney E. Broschius & Kathy S. Javian, *The Evolution of Sentencing Policy in New Jersey, New York, and Pennsylvania*, 22 COMMONWEALTH 3, 17 (2023).

⁸⁵ N.J. REV. STAT. § 30:4-123.51c (2019) (repealed in 2020).

⁸⁶ Arizona, Minnesota, and Florida all introduced CRPs proximate to their TIS laws. Nicklin, *supra* note 6, at 132-34.

⁸⁷ This includes one CRP from the 1960s (Delaware), three from the 1980s (South Carolina, Tennessee, Washington), and six from the 1990s (Arizona, Florida, Georgia, Indiana, Minnesota, New Mexico). Nicklin, *supra* note 6, at 89.

Era III: 2010s – Reframing Compassionate Release through Justice Reinvestment and “Smart Justice” Reforms

The third era began in the 2010s as the consequences of the more punitive sentencing policies of the 1990s were realized. Policymakers faced the realities of caring for elderly and seriously ill prisoners who posed minimal risk but imposed heavy financial burdens.⁸⁸ Against this backdrop, the Justice Reinvestment Initiative (JRI) offered a new data-driven rationale for reform.⁸⁹ The JRI incentivized states through funding to analyze correctional data and redirect savings from reduced incarceration toward community programs.⁹⁰ Within this framework, compassionate release was a tool for reducing costs while also addressing humanitarian concerns.

The first recorded state CRP developed through the JRI was enacted in South Carolina as part of its Omnibus Crime Reduction and Sentencing Reform Act of 2010.⁹¹ Consistent with earlier reform patterns, compassionate release was introduced through a broad criminal justice reform package rather than as a standalone measure. South Carolina’s CRP authorizes the Director of the Department of Corrections to petition the Board of Pardons and Paroles for the release of prisoners who are “terminally ill,” “elderly,” or “physically incapacitated.”⁹² The provision allows petitions for release to be initiated by the corrections executive before being reviewed by the Parole Board.⁹³ South Carolina’s eligibility categories likewise encompass terminally ill, seriously ill, and elderly prisoners, paralleling the federal CRP but differing in the definitions applied to each group.⁹⁴ South Carolina’s criteria for the compassionate release of elderly prisoners⁹⁵ also closely align with the District of Columbia’s (D.C.) *Medical and Geriatric Suspension of Sentence* provision,⁹⁶ as both frameworks employ the phrase “chronic infirmity, illness, or disease related to aging.”⁹⁷

Other states revised their CRPs during this period by broadening eligibility criteria. Colorado, for example, originally established its CRP in 2000 but overhauled it in 2011.⁹⁸ The reforms lowered the age threshold for geriatric release from 65 to 60, altered the decision-making structure, and expanded the eligibility categories. Notably, Colorado also adopted language closely resembling D.C.’s CRP, allowing release for individuals “suffering from a chronic infirmity, illness, condition, disease, or mental illness.” This suggests that D.C.’s framework served as a model not only for South Carolina but also for Colorado as states responded to the JRI. Two other states aligned with D.C.’s CRP alongside their engagement with the JRI. Alabama created two CRPs (one in 2008 and another in 2017) and joined the JRI in 2014; both

⁸⁸ Tina Chiu, *It’s About Time: Aging Prisoners, Increasing Costs, and Geriatric Release* (VERA INST. OF JUST. 2010), <https://www.vera.org/downloads/publications/Its-about-time-aging-prisoners-increasing-costs-and-geriatric-release.pdf>.

⁸⁹ Nancy La Vigne et al., *Reforming Sentencing and Corrections Policy: The Experience of Justice Reinvestment Initiative States*, v (URBAN INST. 2017), https://www.urban.org/sites/default/files/publication/86691/reforming_sentencing_and_corrections_policy_1.pdf.

⁹⁰ *Id.*

⁹¹ Omnibus Crime Reduction and Sentencing Reform Act of 2010, Act No. 273, 2010 S.C. Acts 1941.

⁹² S.C. CODE ANN. § 24-21-715 (A)(1-3) (2024).

⁹³ S.C. CODE ANN. § 24-21-715 (B) (2024).

⁹⁴ D.C. CODE § 24-468 (b)(1) (2024).

⁹⁵ S.C. CODE ANN. § 24-21-715 (A)(2) (2024).

⁹⁶ D.C. CODE § 24-468

⁹⁷ D.C. CODE § 24-468 (a)(2) (2024); S.C. CODE ANN. § 24-21-715 (A)(2) (2024). Note that several CRPs have been influenced by the D.C. CRP, as evidenced by the similar terminology. Nicklin suggests that state implementation of D.C.’s (a federal jurisdiction’s) provision may be associated with the JRI’s federal grants. Nicklin, *supra* note 6, at 136-38.

⁹⁸ COLO. REV. STAT. § 17-1-102, § 17.22.5-403.5 (2001). Comparing to the 2011 statutes, the amendments completely update the decision-making chain and eligibility.

statutes explicitly incorporate the D.C. “chronic infirmity, illness, or disease related to aging” criteria.⁹⁹ North Carolina also adopted D.C.’s criteria in 2008¹⁰⁰ and then engaged with the JRI beginning in 2010.¹⁰¹ Altogether, six CRPs across five states utilize statutory language that originated in D.C., underscoring its influence on state-level compassionate release.

In total, thirteen states have created or expanded CRPs in connection with the JRI.¹⁰² This expansion of eligibility and efficiency was mirrored at the federal level through the First Step Act of 2018, which introduced a significant procedural change: it authorized prisoners to file motions for compassionate release directly with federal courts after exhausting administrative remedies. Previously, only the Bureau of Prisons (BOP) could file a motion for compassionate release, leaving prisoners unable to obtain judicial review if the BOP declined or failed to act, a constraint widely regarded as a “barrier.”¹⁰³

The reforms of the 2010s reflected a growing need to implement and broaden release mechanisms—including compassionate release—in response to the long-term effects of the punitive sentencing policies of the 1990s. The JRI, coupled with the availability of federal funding, supplied states with a coherent framework for reform and incentivized them to revisit outdated statutory schemes. Within this context, states frequently looked to federal practice¹⁰⁴ and to one another¹⁰⁵ when shaping their CRPs, producing a notable convergence in terminology, eligibility categories, and procedural design. Together, these reforms signaled a shift toward more pragmatic and human-centered approaches to sentencing.

Era IV: 2020s – Compassionate Release and COVID-19

The fourth phase from 2020 onwards has been shaped by the COVID-19 pandemic, extending compassionate release into new territory. As prisons became centers of infection,¹⁰⁶ CRPs were, for the first time, applied to those who were particularly vulnerable, but not *seriously* ill.¹⁰⁷ During this time, release decisions remained grounded in public practicality, with limited emphasis on compassion.¹⁰⁸

This shift is demonstrated by federal release data during the pandemic period. In the months preceding the onset of COVID-19, from January through March 2020, only fifteen to twenty

⁹⁹ ALA. CODE §14-14-1 (2024); ALA. CODE §15-22-41 (2024).

¹⁰⁰ N.C. GEN. STAT. §15A-1369 (2008).

¹⁰¹ N.C. H.B. 642, 2011 Gen. Assemb., Reg. Sess. (N.C. 2011).

¹⁰² *JRI Policies*, JUST. REINVESTMENT INITIATIVE, <https://justicereinvestmentinitiative.org/jri-policies> (last visited October 30, 2025). The table identifies these states as Alaska, Alabama, Arkansas, Louisiana, Maryland, Michigan, Mississippi, North Dakota, Nebraska, Nevada, Oklahoma, Rhode Island, and South Carolina.

¹⁰³ Allison M. Luczak, *Waivers of Compassionate Release in Plea Bargains: The Need for Administrative Action to Prevent Inequitable Results*, U. CHI. L. REV. ONLINE (Nov. 9, 2021), <https://lawreview.uchicago.edu/online-archive/waivers-compassionate-release-plea-bargains-need-administrative-action-prevent>.

¹⁰⁴ Nicklin, *supra* note 6, at 122-24, 141-44.

¹⁰⁵ *Id.* at 138-41.

¹⁰⁶ James et al., *supra* note 13, at 24 (“In the first several months of the pandemic, the COVID-19 case rate for incarcerated individuals was 5.5 times higher than that of the general US population.”).

¹⁰⁷ *Id.* at 24-25.

¹⁰⁸ The CARES Act, which empowered the Bureau of Prisons to respond to COVID-19, specified that its expanded home confinement authority must remain “consistent with penological, rehabilitative, public health, and public safety goals.” Though this is not directly applicable to compassionate release, it speaks to the US Government’s objectives in managing the pandemic in the context of US prisons. Home Confinement Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, 87 Fed. Reg. 36787, 36791 (June 21, 2022).

prisoners were granted compassionate release each month.¹⁰⁹ Between April 2020 and June 2021, however, the number of releases rose sharply, ranging from one hundred to four hundred per month, representing an unprecedented utilization of compassionate release.¹¹⁰ By 2025, the monthly total had stabilized at approximately thirty to forty releases per month,¹¹¹ suggesting that the surge in releases during the pandemic was an exceptional, temporary response rather than a lasting change in practice.

Taken together, this history suggests that compassion has consistently played (at most) a secondary role in the design and implementation of CRPs. Compassionate release has endured not because of a sustained moral commitment to compassion, but because it offers a pragmatic response to penal pressures. The early CRPs derived from model legislation were typically included as minor provisions within broader criminal justice reform packages, with the most explicitly “compassionate” elements often omitted. In the decades that followed, a shift toward more punitive sentencing meant that CRPs functioned as fail-safes intended to accommodate few prisoners in exceptional circumstances. The renewed attention to compassionate release in the 2010s reflected growing concern about the aging prison population and associated costs. The JRI reframed compassionate release as a tool (or “safety valve”) to manage high-cost, low-risk prisoners. The unprecedented use of compassionate release during the COVID-19 pandemic followed the same pattern. Its application to vulnerable prisoners was driven by public health concerns rather than by a deliberate policy of compassion.

This history has culminated in a broad set of around 90 CRPs, with all jurisdictions except Iowa maintain at least one. They operate through a range of institutional pathways, including parole boards, sentencing courts, governors, and corrections officials, and employ varied labels, eligibility criteria and decision-making processes.¹¹² Scholarship on compassionate release has expanded substantially over the past decade, yet much of it remains either narrowly focused on individual jurisdictions or broadly descriptive of national trends,¹¹³ with relatively little work connecting these two levels.

The absence of an in-depth functional analysis has important implications. The operational features of CRP decision-making are central to understanding why compassionate release remains underutilized, even though statutory frameworks have seen expansions in eligibility through the JRI. As a result, the field possesses a reasonably detailed account of eligibility criteria but lacks a practical framework for examining how CRPs function in practice.

This gap in understanding poses a notable challenge to the implementation of key reforms, such as those advocated by Families Against Mandatory Minimums (FAMM).¹¹⁴ Without a detailed grasp of how CRPs operate, broad recommendations are difficult to apply to the

¹⁰⁹ U.S. Sentencing Comm’n, *Compassionate Release Data Report: Fiscal Years 2020–2022*, Table 1 (Dec. 2022), <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/compassionate-release/20221219-Compassionate-Release.pdf>.

¹¹⁰ *Id.*; James et al., *supra* note 13, at 25 (“In 2020, 2,601 federal cases were approved for release, compared to 145 cases released in 2019 and 24 cases released in 2018 before the First Step Act was implemented.”).

¹¹¹ U.S. Sentencing Comm’n, *Compassionate Release Data Reports: Third Quarter, Fiscal Year 2025* (July 31, 2025), <https://www.ussc.gov/research/data-reports/compassionate-release-data-reports>.

¹¹² *See generally*, Nicklin, *supra* note 6, at 157–81.

¹¹³ *Id.* at 152.

¹¹⁴ Price, *supra* note 5, at 20–21.

nuance of individual jurisdictions. Part II examines this ‘implementation gap’ and explains why a more precise analytic vocabulary is needed to support the implementation of idiosyncratic reforms.

Part II: The Implementation Gap and the Practical Challenges of Reforming Compassionate Release

The limited number of releases via CRPs has been highlighted as a common issue across multiple decades and studies.¹¹⁵ To address these concerns, FAMM conducted an extensive national survey of compassionate release, and issued twenty-one recommendations for policymakers and practitioners. These reforms include encouraging all states to adopt CRPs, ensuring that eligibility criteria are fair and proportionate, creating clear and reasonable timelines for decision-making, publicizing compassionate release policies, providing post-release planning assistance, and requiring systematic data collection.¹¹⁶ Although these recommendations provide valuable guidance, they are presented in general terms. This approach offers stakeholders a useful starting point to visualize the broader problem areas at play and flexibility to innovate in accordance with local circumstances, which is especially helpful given the diverse approaches to compassionate release. This research, however, offers more detailed guidance for how stakeholders can implement these recommendations locally. Consideration of some of FAMM’s recommendations in context illuminates why this is necessary.

For example, FAMM’s recommendation concerning systematic data collection illustrates how implementation depends heavily on the underlying structure of a jurisdiction’s CRP. In the United States, CRPs can be divided into two broad categories. The first consists of provisions that create a distinct pathway for early release, functioning as specialized mechanisms reserved for individuals who meet specific “compassionate” criteria.¹¹⁷ The second category consists of provisions that do not create a distinct mechanism but instead make specific prisoners eligible for consideration under existing release processes, such as standard parole.¹¹⁸ In jurisdictions that employ the first model, data collection can follow a straightforward structure that records applications, decisions, and releases. However, CRPs that operate through existing release mechanisms require different forms of monitoring, since eligibility is often conferred automatically and release decisions are homogenized into the ordinary workflow of parole.¹¹⁹

Other examples are FAMM Recommendations 18 and 19, which respectively call for prisoners applying for compassionate release to have access to counsel as well as the right to appeal adverse decisions.¹²⁰ For CRPs that operate through a distinct, compassionate-specific release mechanism, implementing these recommendations is generally straightforward, since the

¹¹⁵ John A. Beck, *Compassionate Release from New York State Prisons: Why Are So Few Getting Out?*, 27 J.L. MED. & ETHICS 216 (1999); Berry, *supra* note 66; Price *supra* note 5.

¹¹⁶ Price *supra* note 5, at 20-21.

¹¹⁷ Nicklin, *supra* note 6, at 245 (using the term “special parole” to describe such mechanisms).

¹¹⁸ *Id.* at 246.

¹¹⁹ *Id.* at 284-85 (describing such mechanisms as being part of a “parole eligibility” group of CRPs); *Id.* at 241-42.

¹²⁰ Price *supra* note 5, at 21.

process is separate and can be structured with its own procedural safeguards. In comparison, for CRPs that operate indirectly through existing release mechanisms, such as standard parole, these rights do not attach in a discrete manner. Instead, individuals become subject to the procedural framework that governs all parole candidates, and any rights to representation or appeal are attached to that process.

An additional dimension arises in relation to FAMM Recommendation seven, which calls for stakeholders to establish clear and appropriate timeframes for decision-making.¹²¹ Although CRP legislation typically identifies formal decision-makers, the actual process often involves additional personnel within the corrections department who play a role in progressing an application. These individuals are not statutorily recognized decision-makers, yet they perform essential administrative or evaluative functions that influence whether, and how quickly, a case progresses.¹²² Their involvement is usually captured in internal policy documents, and any attempt to impose meaningful timelines must therefore take account of their role. For example, there is a clear distinction between the decision-making chains described in Missouri's *Medical Parole* provision¹²³ and the Missouri Parole Board's policy. The former statute states that medical eligibility needs to be certified by the prison's Primary Care Physician.¹²⁴ However, the latter Board of Parole Policy adds that the "Primary Care Physician *and the Division of Rehabilitative Services* will determine if the offender meets the medical parole criteria."¹²⁵ This distinction means that any time frames attached to determining medical eligibility also need to reflect the additional element included in the policy documents.

The FAMM Recommendations form the basis of the organization's 'Compassionate Release Toolkit', designed to assist stakeholders in translating the recommendations into practice.¹²⁶ The Toolkit represents an important development, particularly in its detailed guide on formulating clear and appropriate eligibility criteria.¹²⁷ Despite this, there remains opportunity to propose more precise analytical frameworks in order to assist stakeholders in identifying and implementing jurisdiction-specific reforms. Across the US, CRPs differ not only in eligibility criteria but also in their structure, decision-making pathways, and procedures.¹²⁸ A clear and consistent conceptual vocabulary—a lexicon—is therefore essential for understanding how CRPs function and determining how reform measures should be adapted to individual systems. Current reform tools—including the FAMM recommendations and the Compassionate Release Toolkit—do not fully account for these functional distinctions. This research, however, offers

¹²¹ Price *supra* note 5, at 21.

¹²² Nicklin, *supra* note 6, at 301 (describing such additional decision-making elements as "shadow processors").

¹²³ MO. REV. STAT. § 217.250 (2024).

¹²⁴ *Id.*

¹²⁵ MO. DEP'T OF CORR., *Procedures Governing the Granting of Parole and Conditional Releases* §29.B, at 4 (Mar. 17, 2022), <https://doc.mo.gov/media/pdf/rules-and-regulations-governing-granting-paroles-and-conditional-releases-appendices-0>.

¹²⁶ FAMM, *Compassionate Release Toolkit: Crafting Compassionate Release Programs That Work* (Oct. 2022), <https://famm.org/wp-content/uploads/2022/10/compassionate-release-toolkit.pdf>.

¹²⁷ For example, it identifies specific categories of medical and humanitarian need, including terminal illness; serious or chronic conditions that substantially impair self-care in prison; cognitive impairment; age-related physical or mental decline; heightened vulnerability during serious infectious disease outbreaks; age-and-time-served criteria reflecting desistance; extreme family circumstances; and exceptional hardships arising from the prison environment. *Id.* at 3-4.

¹²⁸ Tina Maschi et al., *An Analysis of United States Compassionate and Geriatric Release Laws: Towards a Rights-Based Response for Diverse Elders and Their Families and Communities* 13 (BE THE EVIDENCE PRESS, May 9, 2015), available at <https://www.prisonlegalnews.org/media/publications/Analysis%20of%20United%20States%20Compassionate%20and%20Geriatric%20Release%20Laws%2C%20Be%20the%20Evidence%20Press%2C%202015.pdf>.

a precise lexicon designed to address this gap through the identification of core functional characteristics that distinguish one category of CRP from another.

Part III explains the *Compassionate Release Lexicon* (“the Lexicon”) which was developed to bridge the gap between the limited information available about how CRPs operate in practice and the generalized nature of existing reform recommendations. By providing a functional method for identifying and describing the operational features of each CRP, the Lexicon enables recommendations to be calibrated to the specific mechanisms, processes, and decision-making structures that shape each CRP, thereby supporting reforms that are sensitive to the practical realities within individual jurisdictions.

Part III: Proposing the ‘Lexicon’ as a Tool for Stakeholders in Compassionate Release Reform

The Lexicon identifies four core functional roles within any CRP, namely the: (1) *Initiator*, (2) *Processor*, (3) *Decision-Maker*, and (4) *Ultimate Decision-Maker*.¹²⁹ These labels describe the essential components of the decision-making process, allowing CRPs to be analyzed in a consistent manner even when jurisdictions use different terminology or distribute responsibilities differently. Despite the diversity of statutory language, each CRP includes individuals and/or authorities that perform these common functions, and the Lexicon captures these similarities in a clear, transferable form.

The *Initiator* refers to the mechanism through which a request for compassionate release commences and the person/authority authorized to initiate the process.¹³⁰ In some jurisdictions, initiation occurs through a petition submitted by the prisoner or their representative.¹³¹ In others, initiation may be institutional, with the relevant authority or sentencing court responsible for identifying eligible prisoners and progressing applications.¹³² Certain CRPs initiate automatically when a prisoner meets specified criteria, such as age or time served, without any petition at all.¹³³ Nicklin’s research categorized these pathways, respectively, as petitionable, institutional, or automatic, reflecting the three principal ways in which CRPs are initiated.¹³⁴ Although the concept of initiation has limited antecedents in the literature, such as John Beck’s reference in 1999 to who could “initiate” New York’s CRP,¹³⁵ Nicklin provides the first systematic definition of the category that distinguishes the principal initiation methods.

A *Processor* is an authority within the decision-making chain who verifies or certifies a specific component of the eligibility criteria, but does not determine overall eligibility for release.¹³⁶ For example, a physician may be responsible for confirming that an prisoner meets the medical

¹²⁹ Nicklin, *supra* note 6, at 226.

¹³⁰ For a full analysis of ‘Initiators’ within the context of CRPs for geriatric prisoners, see Nicklin, *supra* note 6, at 263-91.

¹³¹ Twelve of nineteen CRPs analyzed in Nicklin’s research permitted someone other than the prisoner to petition for their release. *Id.* at 277.

¹³² See ALA. CODE § 15-22-41 (2020) (medical parole); VA. CODE ANN. § 53.1-40.01 (2020) (geriatric conditional release); TEX. GOV’T CODE ANN. § 508.146 (West 2020) (medically recommended intensive supervision).

¹³³ Nicklin, *supra* note 6, at 281.

¹³⁴ *Id.* at 263.

¹³⁵ Beck, *supra* note 115, at 217; Cooper, *supra* note 4, at 13.

¹³⁶ Nicklin, *supra* note 6, at 291-92.

requirements set out in the statute (a “Medical Processor”),¹³⁷ and a classification officer may verify whether an offence type disqualifies a prisoner from eligibility (a “Correctional Processor”).¹³⁸ Processors perform essential, criterion-specific functions without exercising discretionary authority over the broader release decision. While the term *Processor* has not explicitly appeared previously in compassionate release scholarship, work has noted related functions.¹³⁹ Introducing this clearly defined term, however, fills a conceptual gap by identifying the administrative and clinical actors whose work materially shapes whether an application progresses.

This *Processor* role is distinct from that of a *Decision-Maker* (DM), who evaluates a prisoner’s overall eligibility for compassionate release rather than certifying a single criterion. Depending on the design of the CRP, a DM may either exercise a veto over the request (labeled as a ‘DM/v’ under the Lexicon) or issue a non-binding but potentially influential recommendation (labeled as a ‘DM/r’) before the next stage of the process. A further defining feature of DMs is that they do not possess the final authority to grant release.

Nicklin’s analysis distinguishes a DM from a *Processor* by reference to the person/authority’s professional qualifications and the scope of the criteria they must assess. Whereas a *Processor* verifies a discrete, criterion-specific requirement within their area of expertise, a DM engages with broader, often multi-factor eligibility questions. This distinction is well illustrated by the federal CRP. A request initiated by a prisoner is forwarded to the prison Warden, who must provide a recommendation on whether the prisoner is suitable for compassionate release.¹⁴⁰ Although the Warden’s assessment may touch on medical issues, the Warden is neither performing a clinical function nor qualified to make medical determinations. Because the Warden’s evaluation concerns general suitability,¹⁴¹ rather than the certification of a specific criterion, the Warden functions as a DM rather than a *Processor*.

Although the determinations made by DMs may shape or inform the outcome process, they do not constitute the final authority to grant release. That authority rests with the *Ultimate Decision-Maker* (UDM). Nicklin identifies four principal categories of UDMs: parole boards, corrections executives, courts, and governors, with each performing the adjudicative function within its respective framework.¹⁴² Although prior scholarship has occasionally used terms such as “decision-maker” or “ultimate decision-maker,”¹⁴³ Nicklin provides the first clear definitions that distinguish between UDMs, DMs, and *Processors*.

Together, these four roles provide a coherent conceptual framework for analyzing CRPs, which resolves the inconsistencies in statutory terminology. By mapping each CRP onto this shared functional structure, the Lexicon enables meaningful comparison, highlights structural

¹³⁷ *Id.* at 296-301.

¹³⁸ *Id.*

¹³⁹ “[...] a health-care professional must attest to the patient’s medical diagnosis, care needs and prognosis.” Alexa Kanbergs et al., *A Stepwise Guide for Healthcare Professionals Requesting Compassionate Release for Patients Who Are Incarcerated*, 18 INT’L J. PRISON HEALTH (2023), PMCID PMC10141511, <https://pmc.ncbi.nlm.nih.gov/articles/PMC10141511> (highlighting that the role of the health-care professional is merely to ‘attest’ to medical eligibility and needs).

¹⁴⁰ 28 C.F.R. § 571.61–.62 (2025).

¹⁴¹ Due to the absence of quantifiable criteria. See *id.*

¹⁴² Nicklin, *supra* note 6, at 338.

¹⁴³ Sarah L. Cooper, *State Compassionate Release Approaches in the USA: A Blueprint for Discussion* (2017) (unpublished, on file with author).

strengths and weaknesses, and supports reform efforts that are tailored to the actual operation of CRPs. Part IV shows how the Lexicon moves beyond conceptual clarification to serve as a practical analytical tool, enabling both structural diagnosis and cross-jurisdictional comparison of CRPs.

Part IV: The Lexicon as a Tool for Structural and Comparative Analysis

The Lexicon supports two distinct forms of analysis. The first is a jurisdiction-specific structural analysis, in which the Lexicon is used to map the components of a single CRP and to identify the inflection points that most affect release outcomes. This form of analysis enables an assessment of how the roles, sequencing, and decision-making authorities within a particular CRP operate in practice, and how these structural features contribute to overall system's effectiveness. The second is comparative. By standardizing the terminology used to describe decision-making roles across jurisdictions, the Lexicon allows CRPs with very different statutory frameworks or administrative vocabularies to be compared on a common analytic plane, facilitating the identification and transfer of best practices. These two analytical approaches are demonstrated in the two subsections below.

A. Structural Analysis

This section illustrates the use of the Lexicon as a jurisdiction-level analytical tool through an examination of Washington's EMP provision.¹⁴⁴ Washington provides a good example because its publicly reported release data enables an exploration of where decision-making bottlenecks arise. By mapping each stage of the EMP process alongside available data on approvals, denials, and attrition rates, the Lexicon assists stakeholders in evaluating how the sequence of people/authorities and their delegated responsibilities shapes release outcomes.

The procedure for Washington's EMP is contained within their Department of Corrections policy documents.¹⁴⁵ The *Initiator* in this case can be the "incarcerated individual, health services leadership, or a community member,"¹⁴⁶ who makes the referral to the EMP Coordinator (or their designee). The role of the EMP Coordinator is to oversee and manage the prisoner's request for release, compiling and transferring records and other information, but as they are performing a purely administrative function and they have no ability to provide input on the decision through a recommendation or veto the request, they are a *Processor* within the Lexicon.

The EMP Coordinator then assigns a Health Services employee to perform an assessment of the prisoner's medical condition.¹⁴⁷ As this is a medical service provider performing an assessment that relates to the medical eligibility criteria, they are considered a *Medical Processor*. The request then goes through the Chief Medical Officer (CMO), who will determine whether the

¹⁴⁴ WASH. REV. CODE § 9.94A.728 (c)(i) (2020).

¹⁴⁵ Wash. Dep't of Corr., Extraordinary Medical Placement, DOC 305.270 (Apr. 14, 2021), <https://doc.wa.gov/sites/default/files/2025-02/350270.pdf>.

¹⁴⁶ *Id.* at I.B.

¹⁴⁷ *Id.* at I.B.3.

prisoner is medically eligible for release.¹⁴⁸ As the CMO is determining a specific point of eligibility that is within their area of competence, they would also be considered as a *Medical Processor*.

If the prisoner is considered medically eligible, then the request is progressed to the Headquarters Community Screening Committee (HCSC).¹⁴⁹ The HCSC will review the request, along with the documentation, and input from other correctional and medical authorities regarding the prisoner's suitability for release. The first stage of their approval is referred to as 'conditional approval.'¹⁵⁰ This is a determination about overall eligibility; therefore, they are a *Decision Maker* with a power to veto the request (a 'DM/v' per the Lexicon).

If the prisoner receives conditional approval from the HCSC, the release plan will be developed while the prisoner's condition is monitored, and once complete, the EMP Coordinator will then present it to the HCSC again for final approval.¹⁵¹ The HCSC will conduct their final review, where they will make their overall recommendation and forward the referral to other stakeholders for their recommendations.¹⁵² The fact that these are 'recommendations' that are not constrained by a particular eligibility criterion, means that both the HCSC and the other stakeholders are *Decision Makers* with the ability to make a recommendation (a 'DM/r' per the Lexicon). These recommendations are then forwarded to the Secretary of the Department Corrections,¹⁵³ who is the *Ultimate Decision-Maker*. When coded, the full process with the Lexicon can be structured as per Table 1:

Washington's Extraordinary Medical Placement	
Lexicon Code	Authority
I	Anyone
P(Admin)	EMP Coordinator
P(Admin)	Health Services Employee
P(Medical)	Facility Medical Director
DM/v	HCSC (initial review; veto)
DM/r	HCSC (final review; recommendation)
DM/r	Assistant Secretary for Re-entry
DM/r	Assistant Secretary for Community Corrections
DM/r	Deputy Directors for Prisons
DM/r	Deputy Secretary for Health Services
UDM	Secretary of the Department of Corrections

Table 1: Decision-Making Chain of Washington's Extraordinary Medical Placement CRP with Lexicon Coding

This codification shows there are three *Processors* and six DMs. Although, two of these *Decision Makers* are the HCSC, who provide conditional approval and then final approval once the release planning is complete. This allows for a key structural observation—namely,

¹⁴⁸ *Id.* at I.C.3.

¹⁴⁹ *Id.* at III.A-B.

¹⁵⁰ *Id.* at III.B.

¹⁵¹ *Id.* at III.B.1-2.

¹⁵² *Id.* at III.C.1-4.

¹⁵³ *Id.* at III.D.

whether holding two separate meetings is more effective than completing the release planning before the HCSC issues its decision. Further, release data also reveal where potential friction points are and can provide insights into the effectiveness of the double decision-making role of the HCSC. *Figure 1* below shows the 2021¹⁵⁴ corrections report on Washington’s EMP provision.

Number of incarcerated individuals considered for EMP during the reporting period*	44
Number of incarcerated individuals granted an EMP	2
Total number who were on EMP status sometime during the reporting period	4
Number of incarcerated individuals denied an EMP	29
Number who were denied placement because they did not fit the medical criteria (RCW 9.94A.728(c)(i))	25
Number who were denied placement because they do not fit the safety criteria per Headquarters Community Screening Committee (HCSC)	4
Number who were denied placement by the DOC Secretary	0
Other outcomes of incarcerated individuals during the reporting period	13
Number that died during consideration for an EMP/ before EMP placement	3
Number who were released prior to placement/consideration	0
Number who refused, EMP was rescinded or were LWOP & did not qualify	4
Number approved for EMP but were actively awaiting placement in the community	3
Number who died while on EMP	0
Number who released while on EMP**	2
Number who were being considered for EMP at the end of the reporting period	1

Figure 1: Release Data from the Washington Department of Corrections’ 2021 Extraordinary Medical Placement Report

Two key observations can be made. First, it reveals where the power to deny a request for release is vested along the decision-making chain. The third section, labeled ‘Number of Incarcerated Individuals denied an EMP’, shows that a prisoner’s request for release can be denied on grounds of medical ineligibility (through the Facility Medical Director), through the HCSC, and through the DOC Secretary. Second, it reveals the significance of each part of the decision-making chain by quantifying how many requests were initiated, and how many were denied at each stage. Washington’s EMP data can be tracked from 2019 to 2022,¹⁵⁵ and the number of applications and denials at each stage have been recorded in Table 2.

¹⁵⁴ The 2021 report provides the most comprehensive and consistent breakdown of information relevant to the Lexicon analysis, whereas other reports do not. In addition, a policy revision in 2025 further supports reliance on the policy in force from 2021 to 2024, which provides a more stable and reliable basis for analysis. Wash. Dep’t of Corr., *Extraordinary Medical Placement (EMP) CY 2021*, Pub. No. 600-SR003 R. 10/13/2022, https://app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=2021%20EMP%20Data_73e6a2a3-0351-41f4-89b9-2d4710e8de8f.pdf. To view the available data on Washington’s EMP, see Wash. Dep’t of Corr., *Publications*, <https://doc.wa.gov/records/publications> (last visited Dec. 12, 2025) (listing annual reports on EMP).

¹⁵⁵ While more recent data are available, inconsistencies in reporting limit their analytical utility. Data reported from 2016 (the first available report) through 2023 (the most recent at the time of writing) vary in format and level of detail. The most consistent span is from 2019 to 2022.

Year	Applications /Referrals	Denied by Processor	Denied by DM	Denied by UDM	Approved for EMP
2022	40	27	4	0	4
2021	44	25	4	0	2
2020	75	56	12	0	4
2019	32	18	3	0	0

Table 2: Number of Applications, Approvals, and Denials at Each Stage of Washington’s Extraordinary Medical Placement Process, 2019–2022¹⁵⁶

Overall, the data reveal a consistently high rate of attrition across the four-year period, with only a small fraction of requests resulting in compassionate release. The concentration of denials at the *Processor* stage may be a driver of this pattern, indicating that medical eligibility determinations represent a critical point of inflection in the decision-making chain. This suggests that if medical eligibility criteria were broadened then more requests might progress past this initial stage, potentially increasing the overall approval rate for EMP placements. However, an additional limitation arises from what the data do not provide: the total number of individuals who were considered and denied at each stage of review. Washington reports how many applicants died, withdrew, or were otherwise released through other means during the process,¹⁵⁷ but it does not specify how many were formally approved or denied at each decision point. As a result, the dataset does not fully show the conversion rate at each stage, which limits the ability to more effectively identify structural barriers.

Even with data limitations, it is still possible to identify the types of considerations likely operating at each stage of review. Because *Processors* make determinations of eligibility based on a specific criterion, a high rate of denials relative to the number of applications could suggest that the medical or correctional eligibility criteria are set at a restrictive threshold that functions as an early barrier. At the DM level, a high rate of denials could reflect several possibilities. One is that the eligibility criteria applied by *Processors* are too permissive, resulting in a larger group of less suitable applicants reaching the DM stage and being denied accordingly. Another possibility is that DMs are applying additional evaluative criteria that go beyond what is prescribed. It is also possible that the relevant criteria lack sufficient clarity to ensure consistent application. At the UDM level, a high rate of denials could indicate that system-level or policy-based considerations play a significant role in determining who is granted release, particularly when earlier DMs have already found that an applicant meets the relevant medical and public safety criteria. Although the Washington EMP dataset does not provide full details of approvals and denials at each step, these points help illustrate how the structure of decision-making, together with the applicable eligibility criteria, shapes outcomes across the review process.

Additionally, if the data reveal a substantial “exit rate,” consisting of applicants who leave the process for reasons other than formal denial, including death, withdrawal, or release through

¹⁵⁶ Wash. Dep’t of Corr., *Publications* (Extraordinary Medical Placement Reports), <https://doc.wa.gov/records/publications> (last visited Dec. 12, 2025).

¹⁵⁷ Wash. Dep’t of Corr., *Extraordinary Medical Placement (EMP) CY 2021*, Pub. No. 600-SR003 R. 10/13/2022, https://app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=2021%20EMP%20Data_73e6a2a3-0351-41f4-89b9-2d4710e8de8f.pdf (under heading “Other outcomes of incarcerated individuals during the reporting period”).

other mechanisms, this may suggest that the review process is lengthy or difficult to navigate. The amount of time required by each component of the decision-making chain may contribute to delays that prevent applicants from receiving a timely determination. If so, streamlining the process by establishing timelines, eliminating double decision-making (such as with Washington’s HCSC) or clarifying the criteria applied at each stage to promote consistent decision-making, could reduce attrition.

By combining the Lexicon with data on considerations and denials at each stage of the decision-making chain, it becomes possible to identify the junctures that most significantly influence release outcomes—and, consequently, where, how, and why reforms should be targeted. For example, while FAMM’s recommendations five and six respectively call for the removal of unduly strict criteria and for eligibility standards that reflect evidence and best practice,¹⁵⁸ this analysis suggests that such reforms should be tailored to the specific stage at which the criteria are having their greatest effect. If *Processors* are responsible for most denials, the focus should be on recalibrating medical or correctional eligibility. If DMs are the primary source of attrition, the governing criteria may require clarification to prevent inconsistent or discretionary application. If UDM decisions account for the largest share of denials, system-level policy directives may need reconsideration.

Additionally, observing the “exit rate” throughout the decision-making chain provides an indicator of the extent to which CRPs are effectively engaging with FAMM recommendation seven, which calls for the establishment of timelines that enable informed decisions while also ensuring expedited review in cases involving terminal illness.¹⁵⁹ A high exit rate may suggest that the timing or sequencing of review does not adequately balance between sufficiency (i.e., public safety) and sensitivity (i.e., to the prisoner’s circumstances).

Further, FAMM recommendation twenty urges states to require all agencies involved in compassionate release to provide annual data on applications, approvals, denials, and revocations, including demographic information and the reasons for denials and revocations.¹⁶⁰ The analysis facilitated by the Lexicon builds on this recommendation by suggesting that data collection should also include the number of considerations and denials at each stage of review, as well as information on applicants who exit the process for reasons other than rejection. These additional data would allow for a more complete understanding of how the decision-making chain functions in practice.

The next section builds on this foundation by utilizing the Lexicon to enable a comparative analysis of Ohio’s *Judicial Release* provision¹⁶¹ and the federal CRP.¹⁶²

B. Comparative Analysis

¹⁵⁸ Price, *supra* note 5, at 21.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ OHIO REV. CODE ANN. § 2929.20 (2024).

¹⁶² 18 U.S.C. § 3582(c)(1)(A).

The Lexicon also provides a structured method for comparing CRPs. Although states and the federal system use varied and often idiosyncratic terminology to describe the people/authorities and stages involved in their processes, the Lexicon permits these systems to be analyzed through a common conceptual framework. This enables meaningful comparisons across jurisdictions, revealing differences in structure and responsibility that might otherwise be obscured, and facilitates the identification of best practices that can be adapted for use in other systems. This section applies the Lexicon to Ohio’s *Judicial Release* provision and to the federal CRP, both of which designate the sentencing court as the UDM.

Ohio’s *Judicial Release* provision reads:

“[...] the sentencing court, upon the court’s own motion and after considering whether the release of the offender into society would create undue risk to public safety, may grant a judicial release to an offender who is not serving a life sentence at any time during the offender’s imposed sentence when the director of rehabilitation and correction certifies to the sentencing court through the chief medical officer for the department of rehabilitation and correction that the offender is in imminent danger of death, is medically incapacitated, or has a terminal illness.”¹⁶³

In terms of initiation, the statute provides that the motion to request release can come from the sentencing court or the prisoner. There are two *Processors*, the first being the Director of Rehabilitation and Correction who functions as a ‘*Correctional Processor*’ because the certification includes verification that the prisoner is eligible in a corrections context. The Chief Medical Officer performs the medical certification by confirming that the prisoner is in imminent danger of death, medically incapacitated, or terminally ill (and therefore is a Medical Processor). The legislation further adds that, prior to the hearing, the warden is required to send “an institutional summary report on the offender’s conduct in the institution and in any institution from which the offender may have been transferred.”¹⁶⁴ This report consists of “[...] the subject offender’s participation in school, vocational training, work, treatment, and other rehabilitative activities and any disciplinary action taken against the subject offender.”¹⁶⁵ There is neither an indication that the Warden is required to make any recommendation in this report, nor is there conferred any power of veto. As such, the Warden is a *Processor* performing an administrative function. The request then progresses to the UDM, namely the sentencing court. The structure of this CRP is presented in Table 3.

Ohio’s Judicial Release Provision	
I	Petitionable (Prisoner); Institutional (Sentencing Court)

¹⁶³ OHIO REV. CODE ANN. § 2929.20 (N)(1-2) (2024).

¹⁶⁴ OHIO REV. CODE ANN. § 2929.20 (G) (2024).

¹⁶⁵ *Id.*

P	Director of Rehabilitation and Correction (Correctional)
P	Chief Medical Officer (Medical)
P	Warden (Correctional)
UDM	Sentencing Court

Table 3: Ohio’s Judicial Release CRP Coded through the Lexicon Terminology

By contrast, the federal CRP is governed by the Code of Federal Regulations (CFR), which establishes the sequence of review through which a request moves within the BOP.¹⁶⁶ A request may be initiated by the prisoner or by another individual acting on the prisoner’s behalf.¹⁶⁷ Once the request is before the Warden, the CFR provides that “If the Warden, upon an investigation of the request, determines that the request warrants approval, the Warden shall refer the matter in writing with recommendation to the Office of General Counsel.”¹⁶⁸ Although the provision refers to the Warden’s action as a “recommendation,” the conditional phrasing (“if the Warden... determines that the request warrants approval”) together with a later regulation stating that the prisoner must be notified when a Warden denies a request,¹⁶⁹ makes it clear that the Warden possesses the authority to terminate the request. In the terminology of the Lexicon, the Warden therefore functions as a *Decision-Maker* with veto authority (DM/v).

If the Warden approves the request, it progresses to the Office of General Counsel.¹⁷⁰ The General Counsel also has the power to deny the request outright,¹⁷¹ making them a DM/v. If the General Counsel determines that the request warrants approval, they must solicit the opinion of either the Medical Director or the Assistant Director of the Correctional Programs Division, depending on whether the request is based on medical or non-medical grounds.¹⁷² Because these authorities are providing recommendations regarding eligibility, and not explicitly constrained to a specific eligibility criterion, they function as *Decision-Makers* with the ability to make recommendations (DM/r).

Once these opinions are obtained, the General Counsel forwards the request to the Director of the Bureau of Prisons for a final agency-level determination.¹⁷³ The Director possesses the authority to approve or deny the request and therefore serves as a DM/v.¹⁷⁴ If approved by the Director, the request is then presented to the sentencing court—the UDM.¹⁷⁵

The First Step Act of 2018¹⁷⁶ altered this sequence by permitting prisoners to file directly in the sentencing court if the Warden denies the request or if 30 days pass without a decision.¹⁷⁷ This creates a parallel pathway in which the court exercises UDM authority even if earlier BOP DMs have declined to advance the request. In the language of the Lexicon, the First Step Act effectively allows applicants to bypass certain DM/v actors and proceed directly to the UDM

¹⁶⁶ 28 C.F.R. §571.60-64 (2025).

¹⁶⁷ *Id.* at §571.61 (a-b).

¹⁶⁸ *Id.* at §571.62 (a)(1).

¹⁶⁹ *Id.* at §571.63 (a).

¹⁷⁰ *Id.* at §571.62 (a)(2).

¹⁷¹ “If the General Counsel determines that the request warrants approval...” *Id.*

¹⁷² *Id.*

¹⁷³ *Id.* at (a)(2-3).

¹⁷⁴ *Id.* at (a)(3).

¹⁷⁵ *Id.* at (b).

¹⁷⁶ First Step Act of 2018 § 603(b), Pub. L. No. 115-391, 132 Stat. 5194, 5239 (2018).

¹⁷⁷ *Id.* at §571.63 (a).

once the statutory exhaustion or lapse period has been satisfied. The full provision is codified in Table 4.

18 U.S.C. § 3582(c)(1)(A)	
I	Petitionable (Prisoner or their Representative)
DM/v	Warden
DM/v	General Counsel
DM/r	Medical Director / The Assistant Director of the Correctional Programs Division
DM/v	Director of the Bureau of Prisons
UDM	Sentencing Court

Table 4: The Federal CRP Coded through the Lexicon Terminology

Although Ohio’s *Judicial Release* provision and the federal CRP both designate the sentencing court as the UDM, the decision-making chains that precede judicial review differ substantially. Ohio’s process relies more heavily on *Processors*, who apply specific eligibility criteria to filter out ineligible applicants early in the process. By contrast, the federal framework employs a more generalized, multi-layered approach in which successive decision-makers exercise broader evaluative judgment rather than applying narrowly defined eligibility criteria.

These structural differences have significant implications for how each system functions in practice. Ohio’s reliance on *Processors* produces a comparatively streamlined pathway in which applicants who meet the statutory and medical criteria reach the UDM with limited discretionary filtering by intermediate authorities. This structure reduces the number of stages at which a request can be terminated before the UDM and therefore may lead to greater predictability and transparency in the application of eligibility criteria. The federal system, by contrast, incorporates multiple layers of more generalized, discretionary decision-making, each of which possesses the authority to halt the request before it reaches the UDM. This multiplicity of DM/v authorities increases the number of potential friction points and could generate delays, inconsistent application of standards, and/or administrative bottlenecks. Moreover, because the federal CRP requires approval by several actors who evaluate the request holistically rather than by reference to discrete eligibility criteria, the outcome of a request may be influenced more heavily by institutional norms, localized practices, or internal policy considerations that may not be publicly reported. The First Step Act mitigates some of these concerns by allowing applicants to bypass the BOP’s internal hierarchy after a period of inaction or denial, but the underlying structural divergence between the Ohio and federal models remains substantial.

The comparative analysis also demonstrates how the Lexicon can guide reform efforts by identifying where structural revisions would be most effective within each jurisdiction. In Ohio, where *Processors* filter applicants primarily through fixed eligibility criteria, reforms aimed at expanding or clarifying those criteria would likely have the most direct impact on the number of applications reaching the UDM.

Furthermore, Ohio could draw from the federal system’s broader inclusion of non-medical pathways for compassionate release. The federal framework permits consideration of circumstances such as advanced age, family caregiving needs, victimization or abuse, and non-

specified ‘other reasons’ that fall outside strictly medical criteria.¹⁷⁸ Incorporating more diverse grounds for release in Ohio would broaden the range of circumstances under which applicants may be considered and would align the system more closely with the functional flexibility present in the federal framework. Because such grounds do not lend themselves to narrowly defined or easily quantifiable criteria, their effective implementation would likely require the addition of a DM capable of evaluating appropriate criteria. In the federal system, however, expanding eligibility alone would not resolve the primary structural barriers, because applicants must pass through multiple DM/v’s whose discretionary authority may limit the effect of statutory changes. Here, reforms directed at reducing the number of veto points (such as transitioning them into DM/r’s) may be more consequential. By isolating the stages at which discretion, delay, or narrow eligibility rules have the greatest effect, the Lexicon enables reforms to be calibrated to the structure of the specific CRP rather than applied uniformly across jurisdictions.

The federal CRP provides consistent and extensive data revealing such details as the number of releases by month and jurisdiction, the racial and gender demographics of releases, offences committed, original sentence length, and a breakdown of the main reasons for approval and denial.¹⁷⁹ However, it does not provide a breakdown of the consideration and denials at each stage of the decision-making chain, which would enable further insight into whether there are structural or other issues that are impacting the number of releases, and constraining stakeholders’ ability to identify and interrogate systemic barriers.

Taken together, this comparison illustrates how the Lexicon not only clarifies the internal functioning of distinct CRPs but also exposes the structural choices that shape their release outcomes. Ohio’s processor-driven model, though narrower in scope, provides a more direct and predictable route to the UDM, while the federal system’s multi-layered chain of discretionary authorities introduces points of friction that can dilute the impact of statutory reforms to eligibility criteria. At the same time, the stark differences in data transparency highlight the limits of evaluating these systems without consistent reporting obligations. By enabling these structural, functional, and informational disparities to be systematically identified, the Lexicon provides a foundation for jurisdiction-specific reforms aimed at improving both the function of CRPs.

Conclusion

Compassionate release has long been assumed to be a human-centered exception to otherwise punitive sentencing regimes. This article has shown that, in practice, it has functioned far more often as a pragmatic administrative safety valve than as a vehicle for compassion. Reflecting on the statutory history of compassionate release alongside broader trends in American penal

¹⁷⁸ See U.S. Sent’g Comm’n, *U.S. Sentencing Guidelines Manual* § 1B1.13 cmt. n.1 (2024) (enumerating categories of extraordinary and compelling reasons for compassionate release).

¹⁷⁹ U.S. Sentencing Comm’n, *Compassionate Release Data Reports*, <https://www.ussc.gov/research/data-reports/compassionate-release-data-reports> (last visited Dec. 12, 2025) (providing annual and quarterly federal compassionate release data on motions decided by the courts, including release numbers, trends over time, and breakdowns by characteristics such as original sentence length and reasons for approval and denial).

policy, this article has shown that these provisions emerged from model penal reforms in the 1960s, expanded in both number and complexity within the punitive sentencing environment of the 1990s, and were later repurposed in the 2010s through Justice Reinvestment as tools of “smart justice” and cost containment. During this latter period, reforms often involved broadened eligibility criteria and revised procedures, before compassionate release was further adapted to address public-health imperatives during the COVID-19 pandemic. Across these eras, the language of “compassion” has typically been subdued or absent, while fiscal and public safety concerns have played a central role in justifying and structuring release.

Part II demonstrated that contemporary efforts to reform compassionate release are constrained by an implementation gap. Even where eligibility criteria have expanded, CRPs often remain underutilized because of the institutional pathways through which requests must travel. Existing reform tools, including FAMM’s recommendations and Toolkit, identify important areas for change but are necessarily general. Without a functional account of how applications are initiated, processed, and decided in specific jurisdictions, such recommendations are difficult to tailor and may fail to disrupt the structural features contributing to low release rates.

To address this problem, the article introduced the *Compassionate Release Lexicon*, a framework that identifies four core functional roles—Initiator, Processor, Decision-Maker, and Ultimate Decision-Maker—present in every known CRP, regardless of jurisdictional terminology or institutional configuration. By mapping Washington’s EMP provision onto these roles and linking them to stage-specific data on denials, the article showed how the Lexicon can reveal where bottlenecks arise, what roles have the greatest impact on decision-making, and how attrition accumulates. The subsequent comparative analysis of Ohio’s *Judicial Release* provision with the federal CRP further illustrated that similar regimes—both assigning ultimate authority to the sentencing court—may differ sharply in their internal architecture, the distribution of discretion, and the points at which applications can end.

These analyses underscore that meaningful reform requires attention not only to “who is eligible” but also to “who decides,” “on what basis,” and “at what stage.” The Lexicon equips stakeholders including prisoners and their representatives, policymakers, courts, corrections agencies, and researchers with a common analytic language for answering these questions. It enables reforms to be calibrated to the specific roles and end points within a given CRP, rather than applied generically across structurally divergent systems. It also identifies refinements to existing reform agendas. For example, that data collection should not only record applications and outcomes, but also the number of considerations and denials at each stage of review, as well as exits from the process due to death, withdrawal, or alternative release mechanisms. Without such information, it is difficult to assess whether low utilization reflects narrow eligibility, variability in discretionary decision-making, administrative delay, or broader institutional norms.

The framework developed here is also forward-looking. As jurisdictions confront ongoing challenges—aging prison populations, rising healthcare costs, future public health emergencies, and growing recognition of the racial and social inequities produced by long-term incarceration—the need for credible, accountable mechanisms for sentence reduction will

intensify. The Lexicon offers a tool for stakeholders to develop and refine CRPs in ways that are structurally coherent, transparent, and responsive to idiosyncratic requirements.

Finally, the Lexicon does not prescribe what compassionate release *ought* to be: it clarifies what it currently is and how it works. Whether jurisdictions choose to retain CRPs as narrow safety valves, or to reorient them more explicitly around “compassion,” or to utilize them in conjunction with broader movements toward “smart justice” and decarceration, those choices should be made with a clear view of the institutional structures that govern release. By making those structures visible and comparable, the Lexicon provides a foundation for reforms that are not only more effective in practice but also more transparent and contestable in principle—ensuring that if a CRP reaches only a small number of people, it does so by deliberate design rather than by structural accident.