

The background of the slide is a photograph of the Kansas State Capitol building in Topeka, Kansas. The building is a grand, classical-style structure with a prominent central dome topped by a statue. The facade features a portico with several columns. The sky is overcast with grey clouds. The text is overlaid on the left side of the image.

Compassionate Release

Kansas Joint Committee on Corrections
and Juvenile Justice Oversight

Oct. 27, 2021 | Carl Reynolds & Madeleine Dardeau



Justice
Center

A Note on Terminology

Medical Parole

Parole eligibility based on a person's medical condition

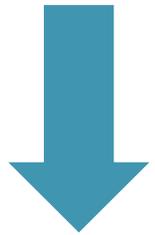
Geriatric Parole or Parole for Older Adults

Parole eligibility based on a person's age or age-related illness or infirmity, including incapacity and the need for long-term care

Compassionate Release

Can refer to **both** medical parole or parole for older adults. While compassionate release policies can often be extended to older adults without terminal illnesses, medical parole policies are almost exclusively reserved for individuals who have the expectation of approaching death due to terminal illness.

Parole for older adults has similar policy goals as medical parole but with a more explicit focus on the aging prison population.



Reduce correctional **health care costs** related to treating older adults.



Increase access to a **higher level of day-to-day care** than what may be available in an institution.

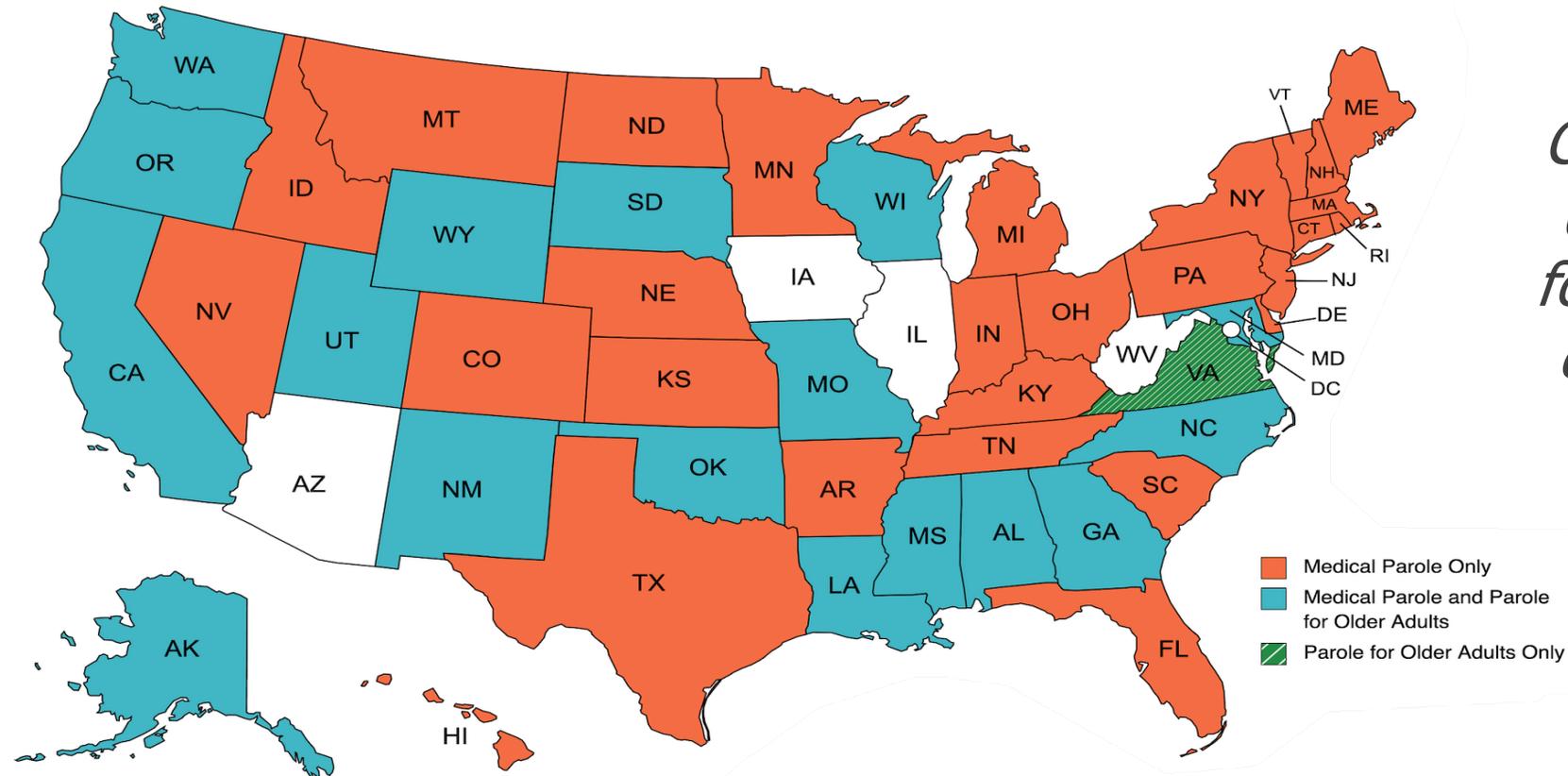


Reduce the **rising number** of incarcerated older adults in the prison population.



Provide a **humane alternative** to continued incarceration for people suffering from age-related issues.

Seventeen states currently have a parole policy for adults aged 50 or higher, with all but one also having medical parole.



Only four states do not provide for some type of compassionate release.

"State Medical and Geriatric Parole Laws," National Council of State Legislatures, 2018, accessed Sept. 23, 2021, <https://www.ncsl.org/research/civil-and-criminal-justice/state-medical-and-geriatric-parole-laws.aspx>.

Most states limit eligibility to people 60 or older and do not require a person to have served any set duration of their sentence.

- 7 Require a person be at least 60.
- 3 Require a person be at least 65.
- 4 Do not have an age requirement and base eligibility on physical incapacitation and/or reduced risk to public safety due to age.
- 8 Do not require a person to have served **any** set duration of their sentence.
- 2 Require a person 60+ to have served at least 10 years and a person 65+ to have served at least 15 years.

Many state policies also include other components such as victim notification and offense exclusions.

Additional components include:

- **Offense carveouts** for a range of violent and/or sexual offenses
- Requirements that a person **serve a defined portion of their minimum sentence** prior to parole consideration
- **Victim notification** when a person is identified or approved for early release, as well as an opportunity for victim input prior to decision-making
- Eligibility exclusions for people **serving life without parole**
- Additional **criteria for release** including significantly reduced risk to public safety and risk to recidivate

In nearly all states, the final release decision is made by the paroling authority or the corrections department.

In addition to age, some states require that a person must also have some type of qualifying age-related infirmity or illness.



In Missouri, an incarcerated person must be incapacitated by age to the extent that they **require long-term nursing home care.**



In North Carolina, in addition to being 65 or older, an incarcerated person must also **suffer from chronic infirmity, illness, or disease related to aging** that has incapacitated the person to the extent they do not pose a public safety risk.



In Oregon, along with being older, an incarcerated person must also be **permanently incapacitated.**

Multiple causes explain the low use of compassionate release.

“Compassionate release is not a transparent and linear process, but an unpredictably ordered series of obstacles.”

- Requiring a person to be extremely close to death, or so incapacitated that they do not understand why they are being punished
- Requiring medical professionals to attest that someone is within six months, or nine months, of death. Health professionals are reluctant to give such exact prognoses, which means prison officials will default to saying “it’s safer just to not let this person go.”
- Allowing the ultimate decision-makers to overrule recommendations from medical professionals and prison staff (e.g., by refuting or ignoring a medical prognosis)

The CSG Justice Center and Association of Paroling Authorities International surveyed paroling authorities in 2020, with 30 states and D.C. participating.

Survey Administration

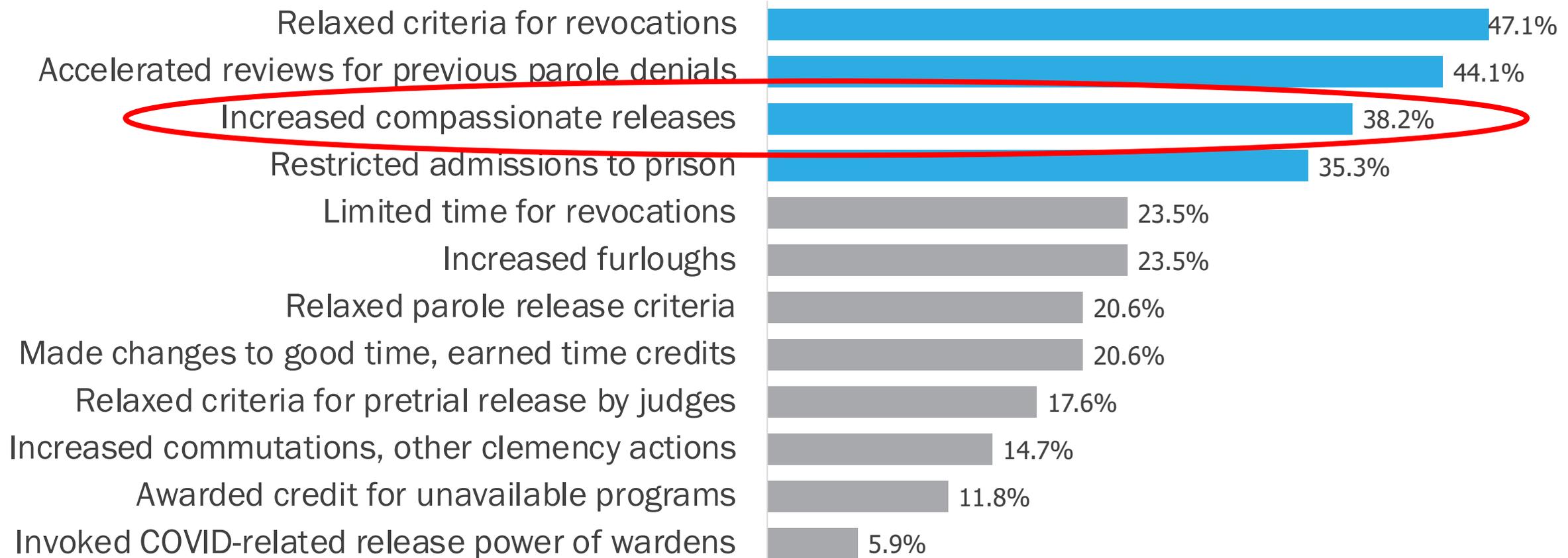
- Developed with APAI input
- Administered September 15–October 2, 2020
- Sent to 74 paroling authorities in 47 states and the District of Columbia

Survey Respondents

- Received 34 responses—a response rate of 46 percent
- Represent U.S. paroling authorities in 30 states and the District of Columbia
- Include paroling authorities in both determinate and indeterminate systems

Many authorities reduced revocations, reviewed previous parole denials, and increased compassionate releases in 2020.

Percent of Paroling Authorities Who Selected Each Option as a Measure Used to Reduce the Prison Population in Their State in 2020



Paroling authorities most frequently supported the expansion of policies for parole of older and medically vulnerable populations as a future policy change.

Percent Mentioned	Support for Policy Changes	Examples
36%	Parole for older/ medically vulnerable populations	"Expanding board's authority to review sentences of elderly"; "enlarge scope of medical parole statute"; "broader compassionate release"
28%	Discretionary release policies	"Increase the Board of Parole's authority regarding release mechanisms"; " accelerate release for inmates who are within 180 days of release"; "expanding the list of sentences the Board may consider for early release "
16%	Parole violation policy changes	"Not requiring a dunk be served in a DOC facility"; " limiting time spent on administrative violations"; "waiver of final parole revocation hearings for violations of parole not involving new crimes"
16%	Videoconferencing	"Conducting parole hearings by video"; "public meetings using virtual technology "; "move to all videoconferencing for release hearings"

Note: N=27. The question was asked as, "What, if any, changes to state law or agency policy would you support in light of changes in practice in 2020?" The percent of state paroling authorities who mentioned each issue in their open-ended response is based on the total number of paroling authorities who cited that challenge out of the total number of paroling authorities who responded to the question.

Kansas requires DOC to initiate and PRB to approve any compassionate releases.

KSA 22-3728. Functional incapacitation release . . .

PRB required to consider factors unrelated to incapacitation in determining incapacitation.

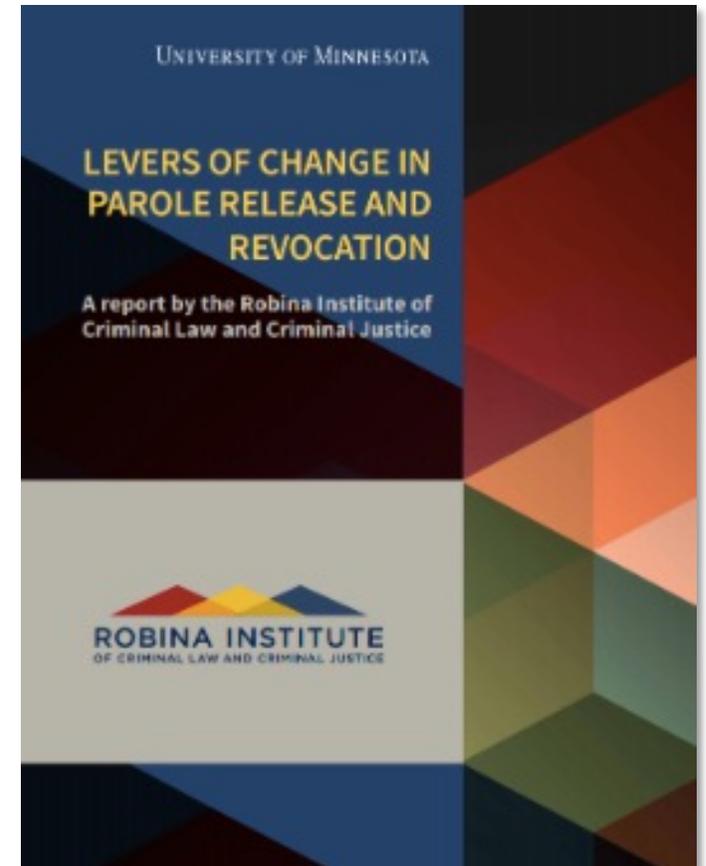
KSA 22-3729. Terminal medical release . . .

Only allowed if condition is likely to cause death within 30 days.

The Robina Institute has helpful information on parole issues, including compassionate release.

- Some form of “CR” is authorized in statute in 49 states.
- Parole boards rarely exercise this form of release.
- An impressive literature indicates that individuals who are eligible for any form of compassionate release are the least likely to be rearrested or reincarcerated; they present little threat to public safety.

Edward E. Rhine, Kelly Lyn Mitchell, and Kevin R. Reitz, “Levers of Change in Parole Release and Revocation” (Robina Inst. of Crim. Law & Crim. Just., 2018), <https://robinainstitute.umn.edu/publications/levers-change-parole-release-and-revocation>. Ashley Nellis, *Still Life: America’s Increasing Use of Life and Long-Term Sentences* (Washington, DC: The Sentencing Project, 2018). George Pro and Miesha Marzell, “Medical Parole and Aging Prisoners: A Qualitative Study,” *Journal of Correctional Health Care* 23, no. 2 (2017); Mary Price, *Everywhere and Nowhere: Compassionate Release in the States* (Washington, DC: Families Against Mandatory Minimum Sentences, 2018).



Review of helpful public sources

Robina Institute: “Levers of Change” and other publications at <https://robinainstitute.umn.edu/areas-expertise/parole-release-revocation>

Prison Policy Institute: COVID response coverage including compassionate release at <https://www.prisonpolicy.org/virus/index.html>

National Conference of State Legislatures: Includes citations to state statutes at <https://www.ncsl.org/research/civil-and-criminal-justice/state-medical-and-geriatric-parole-laws.aspx>

Families Against Mandatory Minimums: Compassionate release is one of their four topics (others are sentencing, prison conditions, and clemency) at <https://famm.org/our-work/compassionate-release/>

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