

2386

2017-2018 Regular Sessions

I N   A S S E M B L Y

January 19, 2017

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Introduced by M. of A. WEPRIN, O'DONNELL, LENTOL, AUBRY -- read once and referred to the Committee on Correction

AN ACT to amend the executive law, in relation to enacting the New York state program for older prisoners act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Short title. This act shall be known and may be cited as  
2     the "New York state program for older prisoners act".

3     S 2. Legislative findings and intent. The legislature hereby finds and  
4     declares that age has been found to be the most reliable predictor for  
5     recidivism and that older inmates pose a very low risk of recidivism. In  
6     order to develop more effective and cost-efficient treatment for the  
7     rising population of geriatric prisoners, the legislature directs the  
8     board to establish a program to consider the release of geriatric  
9     inmates who do not pose a public safety risk.

10    It is further found and declared that it is the legislature's inten-  
11    tion to direct the board of parole to identify all eligible low-risk  
12    geriatric prisoners who are promising candidates for release and, where  
13    appropriate, to release them with adequate transitional programs, appro-  
14    priate levels of community supervision and to assist them to obtain  
15    aftercare services.

16    S 3. Subdivision 3 of section 259 of the executive law, as added by  
17    section 37 of subpart A of part C of chapter 62 of the laws of 2011, is  
18    amended to read as follows:

19    3. "Community supervision" means the supervision of individuals  
20    released into the community on temporary release, presumptive release,  
21    parole, conditional release, post release supervision [or], medical  
22    parole OR GERIATRIC PAROLE.

23    S 4. Subdivision 1 of section 259-c of the executive law, as amended  
24    by section 38-b of subpart A of part C of chapter 62 of the laws of  
25    2011, is amended to read as follows:

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

LBD05029-01-7

1 1. have the power and duty of determining which inmates serving an  
2 indeterminate or determinate sentence of imprisonment may be released on  
3 parole, or on medical parole pursuant to section two hundred  
4 fifty-nine-r or section two hundred fifty-nine-s OR GERIATRIC PAROLE  
5 PURSUANT TO SECTION TWO HUNDRED FIFTY-NINE-T of this article, and when  
6 and under what conditions;

7 S 5. Subdivision 1 of section 259-c of the executive law, as amended  
8 by chapter 55 of the laws of 1992, is amended to read as follows:

9 1. have the power and duty of determining which inmates serving an  
10 indeterminate sentence of imprisonment may be released on parole, or on  
11 medical parole pursuant to section two hundred fifty-nine-r OR GERIATRIC  
12 PAROLE PURSUANT TO SECTION TWO HUNDRED FIFTY-NINE-T of this article, and  
13 when and under what conditions;

14 S 6. Subdivision 1 of section 259-j of the executive law, as amended  
15 by section 38-g of subpart A of part C of chapter 62 of the laws of  
16 2011, is amended to read as follows:

17 1. Except where a determinate sentence was imposed for a felony other  
18 than a felony defined in article two hundred twenty or article two  
19 hundred twenty-one of the penal law, if the board of parole is satisfied  
20 that an absolute discharge from presumptive release, parole, conditional  
21 release, GERIATRIC PAROLE or release to a period of post-release super-  
22 vision is in the best interests of society, the board may grant such a  
23 discharge prior to the expiration of the full term or maximum term to  
24 any person who has been on unrevoked community supervision for at least  
25 three consecutive years. A discharge granted under this section shall  
26 constitute a termination of the sentence with respect to which it was  
27 granted. No such discharge shall be granted unless the board is satis-  
28 fied that the parolee or releasee, otherwise financially able to comply  
29 with an order of restitution and the payment of any mandatory surcharge,  
30 sex offender registration fee or DNA databank fee previously imposed by  
31 a court of competent jurisdiction, has made a good faith effort to  
32 comply therewith.

33 S 7. The executive law is amended by adding a new section 259-t to  
34 read as follows:

35 S 259-T. GERIATRIC PAROLE RELEASE. 1. (A) THE BOARD SHALL BE AUTHOR-  
36 IZED TO ORDER GERIATRIC PAROLE RELEASE FOR ELIGIBLE INMATES. FOR THE  
37 PURPOSES OF THIS SECTION, AN "ELIGIBLE INMATE" IS AN INMATE WHO IS AT  
38 LEAST SIXTY YEARS OF AGE, IS SERVING A DETERMINATE OR INDETERMINATE  
39 SENTENCE OF IMPRISONMENT, AND HAS SERVED AT LEAST ONE-HALF OF THE MINI-  
40 MUM PERIOD OF HIS OR HER INDETERMINATE SENTENCE, OR IN THE CASE OF A  
41 DETERMINATE SENTENCE, HAS SERVED AT LEAST ONE-HALF OF THE TERM OF HIS OR  
42 HER DETERMINATE SENTENCE, PROVIDED, HOWEVER, THAT NO INMATE SERVING A  
43 SENTENCE IMPOSED UPON A CONVICTION FOR MURDER IN THE FIRST DEGREE AS  
44 DEFINED IN SECTION 125.27 OF THE PENAL LAW, AN OFFENSE DEFINED IN ARTI-  
45 CLE ONE HUNDRED THIRTY OF THE PENAL LAW, AN OFFENSE DEFINED IN ARTICLE  
46 TWO HUNDRED SIXTY-THREE OF THE PENAL LAW, OR AN ACT OF TERRORISM AS  
47 DEFINED IN ARTICLE FOUR HUNDRED NINETY OF THE PENAL LAW, OR AN ATTEMPT  
48 OR CONSPIRACY TO COMMIT ANY SUCH OFFENSE SHALL BE ELIGIBLE FOR SUCH  
49 GERIATRIC PAROLE RELEASE.

50 (B) SUCH RELEASE MAY BE GRANTED ONLY AFTER THE BOARD CONSIDERS WHETHER  
51 THERE IS A REASONABLE PROBABILITY THAT, IF RELEASED, THE INMATE WILL  
52 LIVE AND REMAIN AT LIBERTY WITHOUT VIOLATING THE LAW, AND THAT SUCH  
53 RELEASE IS NOT INCOMPATIBLE WITH THE WELFARE OF SOCIETY AND WILL NOT SO  
54 DEPRECATE THE SERIOUSNESS OF THE CRIME AS TO UNDERMINE RESPECT FOR THE  
55 LAW.

(C) THE BOARD SHALL AFFORD NOTICE TO THE SENTENCING COURT, THE DISTRICT ATTORNEY AND THE ATTORNEY FOR SUCH INMATE THAT THE INMATE IS BEING CONSIDERED FOR RELEASE PURSUANT TO THIS SECTION AND THE PARTIES RECEIVING NOTICE SHALL HAVE FIFTEEN DAYS TO COMMENT ON THE RELEASE OF THE INMATE. RELEASE TO GERIATRIC PAROLE SHALL NOT BE GRANTED UNTIL EXPIRATION OF THE COMMENT PERIOD PROVIDED FOR IN THIS PARAGRAPH.

2. THE DEPARTMENT MAY RECOMMEND OR AN INMATE MAY APPLY FOR GERIATRIC PAROLE RELEASE PURSUANT TO THIS SECTION.

3. (A) THE BOARD SHALL DETERMINE WHETHER AN ELIGIBLE INMATE POSES A RISK TO PUBLIC SAFETY. IN ORDER TO MAKE SUCH A RISK DETERMINATION, THE BOARD SHALL USE A VALIDATED RISK ASSESSMENT INSTRUMENT TO MEASURE THE LEVEL OF RISK THE INMATE POSES TO PUBLIC SAFETY. THE BOARD SHALL PERSONALLY INTERVIEW EACH INMATE UNDER CONSIDERATION FOR GERIATRIC PAROLE.

(B) AN ELIGIBLE INMATE GRANTED GERIATRIC PAROLE RELEASE SHALL BE RELEASED SUBJECT TO THE CONDITIONS SET BY THE BOARD AND SHALL BE GIVEN A COPY OF THE CONDITIONS. SUCH CONDITIONS MAY INCLUDE ELECTRONICALLY MONITORED HOME DETENTION.

(C) IF GERIATRIC PAROLE IS DENIED THE INMATE SHALL BE INFORMED IN WRITING WITHIN TWO WEEKS OF HIS OR HER APPEARANCE IN FRONT OF THE BOARD OF THE INMATE'S RISK ASSESSMENT SCORE AND THE FACTORS AND REASONS FOR DENIAL OF GERIATRIC PAROLE RELEASE. SUCH REASONS SHALL BE GIVEN IN DETAIL AND NOT IN CONCLUSORY TERMS.

(D) A DENIAL OF RELEASE ON GERIATRIC PAROLE SHALL NOT PRECLUDE THE INMATE FROM REAPPLYING FOR GERIATRIC PAROLE ANNUALLY OR OTHERWISE AFFECT AN INMATE'S ELIGIBILITY FOR ANY OTHER FORM OF RELEASE PROVIDED FOR BY LAW.

4. GERIATRIC PAROLE RELEASE SHALL BE SUBJECT TO REVOCATION PURSUANT TO SUBDIVISION THREE OF SECTION TWO HUNDRED FIFTY-NINE-I OF THIS ARTICLE.

5. INMATES MAY APPEAL ANY DECISIONS OF THE BOARD MADE PURSUANT TO THIS SECTION IN ACCORDANCE WITH SUBDIVISION FOUR OF SECTION TWO HUNDRED FIFTY-NINE-I OF THIS ARTICLE.

6. THE COMMISSIONER AND THE CHAIRMAN OF THE BOARD SHALL BE AUTHORIZED TO PROMULGATE RULES AND REGULATIONS FOR THEIR RESPECTIVE AGENCIES TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

7. THE COMMISSIONER AND THE CHAIRMAN OF THE STATE BOARD OF PAROLE SHALL ANNUALLY REPORT TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY, THE CHAIRS AND RANKING MINORITY MEMBERS OF THE ASSEMBLY CODES COMMITTEE, THE SENATE CODES COMMITTEE, THE ASSEMBLY CORRECTION COMMITTEE, THE SENATE CRIME VICTIMS, CRIME AND CORRECTION COMMITTEE, THE ASSEMBLY WAYS AND MEANS COMMITTEE AND THE SENATE FINANCE COMMITTEE THE NUMBER OF INMATES WHO HAVE APPLIED FOR GERIATRIC PAROLE; THE NUMBER WHO HAVE BEEN GRANTED GERIATRIC PAROLE; THE COUNTIES TO WHICH THEY HAVE BEEN RELEASED; THE AGES OF THE APPLICANTS; THE CATEGORIES OF DENIAL FOR THOSE WHO HAVE BEEN DENIED; THE NUMBER OF PAROLEES RELEASED TO GERIATRIC PAROLE WHO HAVE BEEN RETURNED TO IMPRISONMENT IN THE CUSTODY OF THE DEPARTMENT AND THE REASONS FOR THEIR RETURN; THE NUMBER OF ELIGIBLE INMATES IN DEPARTMENT CUSTODY WHO ARE SIXTY YEARS OF AGE OR OVER AND AN ESTIMATE OF THE PROJECTED CORRECTIONAL HEALTH CARE SERVICE SAVINGS WERE SUCH INMATES TO BE RELEASED TO PAROLE; AS WELL AS THEIR RECOMMENDATIONS AND FINDINGS BY THE FIRST OF JANUARY NEXT SUCCEEDING THE EFFECTIVE DATE OF THIS SECTION AND EACH JANUARY THEREAFTER.

S 8. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that the amendments to subdivision 1 of section 259-c of the executive law made by section four

1 of this act shall be subject to the expiration and reversion of such  
2 subdivision pursuant to subdivision d of section 74 of chapter 3 of the  
3 laws of 1995, as amended, when upon such date the provisions of section  
4 five of this act shall take effect.