S T A T E O F N E W Y O R K

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I N A S S E M B L Y

January 28, 2009

Introduced by M. of A. AUBRY, BENJAMIN, ORTIZ, GREENE, MILLMAN, CLARK, PERALTA, GOTTFRIED, JEFFRIES, ROBINSON -- Multi-Sponsored by -- M. of A. BOYLAND, BRADLEY, CAHILL, COOK, JACOBS, KELLNER, MAISEL, McENENY, REILLY, SCHIMEL -- read once and referred to the Committee on Correction

AN ACT to amend the executive law, in relation to the release on medical parole of certain inmates

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

Section 1. Paragraph (a) of subdivision 1 of section 259-r of the executive law, as amended by chapter 3 of the laws of 1995, is amended to read as follows:

(a) The board shall have the power to release on medical parole any inmate serving an indeterminate or determinate sentence of imprisonment who, pursuant to subdivision two of this section, (I) has been certified to be suffering from a terminal condition, disease or syndrome and to be so PHYSICALLY OR COGNITIVELY debilitated or incapacitated as to create a reasonable probability that he or she [is physically incapable of presenting] DOES NOT PRESENT any danger to society, OR (II) HAS BEEN CERTIFIED TO BE SUFFERING FROM A SIGNIFICANT AND PERMANENT NON-TERMINAL CONDITION, DISEASE OR SYNDROME THAT HAS RENDERED THE INMATE SO PHYSICALLY OR COGNITIVELY DEBILITATED OR INCAPACITATED AS TO CREATE A REASONABLE PROBABILITY THAT HE OR SHE DOES NOT PRESENT ANY DANGER TO SOCIETY; provided, however, that no inmate serving a sentence imposed upon a conviction for any of the following offenses shall be eligible for such release: murder in the first degree, murder in the second degree, manslaughter in the first degree, any offense defined in article one hundred thirty of the penal law or an attempt to commit any of these offenses.

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

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S 2. Paragraph (a) of subdivision 1 of section 259-r of the executive law, as added by chapter 55 of the laws of 1992, is amended to read as follows:

(a) The board shall have the power to release on medical parole any inmate serving an indeterminate OR DETERMINATE sentence of imprisonment who, pursuant to subdivision two of this section, (I) has been certified to be suffering from a terminal condition, disease or syndrome and to be so PHYSICALLY OR COGNITIVELY debilitated or incapacitated as to create a reasonable probability that he or she [is physically incapable of presenting] DOES NOT PRESENT any danger to society, OR (II) HAS BEEN CERTIFIED TO BE SUFFERING FROM A SIGNIFICANT AND PERMANENT NON-TERMINAL CONDITION, DISEASE OR SYNDROME THAT HAS RENDERED THE INMATE SO PHYSICALLY OR COGNITIVELY DEBILITATED OR INCAPACITATED AS TO CREATE A REASONABLE PROBABILITY THAT HE OR SHE DOES NOT PRESENT ANY DANGER TO SOCIETY; provided, however, that no inmate serving a sentence imposed upon a conviction for any of the following offenses shall be eligible for such release: murder in the first degree, murder in the second degree, manslaughter in the first degree, any offense defined in article one hundred thirty of the penal law or an attempt to commit any of these offenses.

S 3. Subdivision 2 of section 259-r of the executive law, as amended by chapter 503 of the laws of 1994, is amended to read as follows:

2. (a) The commissioner of correctional services, on the commissioner's own initiative or at the request of an inmate, AN INMATE'S SPOUSE, RELATIVE, ATTORNEY OR ADVOCATE OR BY DEPARTMENT OF CORRECTIONAL SERVICES STAFF, may, in the exercise of the commissioner's discretion, direct that a diagnosis be made of an inmate who appears to be suffering from a terminal condition, disease or syndrome OR FROM A SIGNIFICANT AND PERMANENT NON-TERMINAL AND INCAPACITATING CONDITION, DISEASE OR SYNDROME. Any such medical diagnosis shall be made by a physician licensed to practice medicine in this state pursuant to section sixty-five hundred twenty-four of the education law. Such physician shall either be employed by the department of correctional services, shall render professional services at the request of the department of correctional services, or shall be employed by a hospital or medical facility used by the department of correctional services for the medical treatment of inmates. The diagnosis shall be reported to the commissioner of correctional services and shall include but shall not be limited to a description of the [terminal] condition, disease or syndrome suffered by the inmate, a prognosis concerning the likelihood that the inmate will not recover from such [terminal] condition, disease or syndrome, a description of the inmate's physical OR COGNITIVE incapacity which shall include a prediction respecting the likely duration of the incapacity, and a statement by the physician of whether the inmate is so debilitated or incapacitated as to be severely restricted in his or her ability to self-ambulate [and to care for him or herself] OR TO PERFORM SIGNIFICANT NORMAL ACTIVITIES OF DAILY LIVING.

(b) The commissioner, or the commissioner's designee, shall review the diagnosis and may certify that the inmate is suffering from such [terminal] condition, disease or syndrome and that the inmate is so PHYSICALLY OR COGNITIVELY debilitated or incapacitated as to create a reasonable probability that he or she is [physically] incapable of presenting any danger to society. If the commissioner does not so certify then the inmate shall not be referred to the board of parole for consideration for release on medical parole. If the commissioner does so certify, then the commissioner shall, WITHIN THREE WORKING DAYS OF RECEIPT OF SUCH

DIAGNOSIS, refer the inmate to the board of parole for consideration for release on medical parole. However, no such referral of an inmate to the board of parole shall be made unless the inmate has been examined by a physician and diagnosed as having a terminal OR SIGNIFICANT AND PERMANENT NON-TERMINAL AND INCAPACITATING condition, disease or syndrome as previously described herein at some time subsequent to such inmate's admission to a facility operated by the department of correctional services.

(c) When the commissioner refers an inmate to the board, the commissioner shall provide an appropriate medical discharge plan established by the department of correctional services. The board may [reject all or part of the] REVIEW, ALTER AND IMPROVE SUCH discharge plan submitted by the department of correctional services, and may postpone its decision pending [submission of a new] COMPLETION OF AN ADEQUATE discharge plan, or may deny release based on inadequacy of the discharge plan. The department of correctional services and the division of parole ARE AUTHORIZED TO REQUEST ASSISTANCE FROM THE DEPARTMENT OF HEALTH WITH RESPECT TO THE IMPLEMENTATION OF A DISCHARGE PLAN, INCLUDING POTENTIAL PLACEMENTS OF A RELEASEE, AND shall jointly develop standards for the medical discharge plan that are appropriately adapted to the criminal justice setting, based on standards established by the department of health for hospital medical discharge planning.

S 4. Subdivision 4 of section 259-r of the executive law, as added by chapter 55 of the laws of 1992 and paragraphs (a) and (d) as amended by chapter 503 of the laws of 1994, is amended to read as follows:

4. (a) Medical parole granted pursuant to this section shall be for a period of six months.

(b) The board shall require as a condition of release on medical parole that the releasee agree to remain under the care of a physician while on medical parole and in a hospital established pursuant to article twenty-eight of the public health law, a hospice established pursuant to article forty of the public health law or any other placement that can provide appropriate medical care as specified in the medical discharge plan required by subdivision two of this section. The medical discharge plan shall state that the availability of the placement has been confirmed, and by whom.

(c) The board shall require as a condition of release that medical parolees be supervised on [intensive] caseloads [at reduced supervision ratios similar to the caseloads for parolees released pursuant to the shock incarceration program established by article twenty-six-A of the correction law] AS IS APPROPRIATE FOR THE MAINTENANCE OF PUBLIC SAFETY.

(d) The board shall require as a condition of release on medical parole that the releasee undergo periodic medical examinations and a medical examination at least one month prior to the expiration of the period of medical parole and, for the purposes of making a decision pursuant to paragraph (e) of this subdivision, that the releasee provide the board with a report, prepared by the treating physician, of the results of such examination. Such report shall specifically state whether or not the parolee continues to suffer from a terminal OR SIGNIFICANT AND PERMANENT NON-TERMINAL AND INCAPACITATING condition, disease, or syndrome, and to be so debilitated or incapacitated as to be severely restricted in his or her ability to self-ambulate [and to care for him or herself] OR TO PERFORM SIGNIFICANT NORMAL ACTIVITIES OF DAILY LIVING.

(e) Prior to the expiration of the period of medical parole the board shall review the medical examination report required by paragraph (d) of this subdivision and may again grant medical parole pursuant to this

section; provided, however, that the provisions of paragraph (c) of subdivision one and subdivision two of this section shall not apply.

(f) If the updated medical report presented to the board states that a parolee released pursuant to this section is no longer so PHYSICALLY OR COGNITIVELY debilitated or incapacitated as to create a reasonable probability that he or she is [physically] incapable of presenting any danger to society or if the releasee fails to submit the updated medical report then the board may not make a new grant of medical parole pursuant to paragraph (e) of this subdivision. Where the board has not granted medical parole pursuant to such paragraph (e) the board shall promptly conduct through one of its members, or cause to be conducted by a hearing officer designated by the board, a hearing to determine whether the releasee is suffering from a terminal OR SIGNIFICANT AND PERMANENT NON-TERMINAL AND INCAPACITATING condition, disease or syndrome and is so PHYSICALLY OR COGNITIVELY debilitated or incapacitated as to create a reasonable probability that he or she [is physically incapable of presenting] DOES NOT PRESENT any danger to society [and does not present a danger to society]. If the board makes such a determination then it may make a new grant of medical parole pursuant to the standards of paragraph (b) of subdivision one of this section. At the hearing, the releasee shall have the right to representation by counsel, including the right, if the releasee is financially unable to retain counsel, to have the appropriate court assign counsel in accordance with the county or city plan for representation placed in operation pursuant to article eighteen-B of the county law.

(g) The hearing and determination provided for by paragraph (f) of this subdivision shall be concluded within the [four] SIX month period of medical parole. If the board does not renew the grant of medical parole, it shall order that the releasee be returned immediately to the custody of the department of correctional services.

(h) In addition to the procedures set forth in paragraph (f) of this subdivision, medical parole may be revoked at any time upon any of the grounds specified in paragraph (a) of subdivision three of section two hundred fifty-nine-i of this article, and in accordance with the procedures specified in subdivision three of section two hundred fifty-nine-i of this article.

(i) A releasee who is on medical parole and who becomes eligible for parole pursuant to the provisions of subdivision two of section two hundred fifty-nine-i of this article shall be eligible for parole consideration pursuant to such subdivision.

S 5. This act shall take effect immediately, provided that the amendments to paragraph (a) of subdivision 1 of section 259-r of the executive law made by section one of this act shall be subject to the expiration and reversion of such subdivision pursuant to subdivision d of section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section two of this act shall take effect; and provided further that the amendments to section 259-r of the executive law made by sections two, three and four of this act shall not affect the expiration of such section and shall be deemed to expire therewith.