

9465

I N A S S E M B L Y

March 5, 2012

Introduced by M. of A. AUBRY -- read once and referred to the Committee on Correction

AN ACT to amend the executive law, in relation to medical parole

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

1 Section 1. Paragraph (a) of subdivision 1 of section 259-r of the
2 executive law, as amended by section 38-1 of subpart A of part C of
3 chapter 62 of the laws of 2011, is amended to read as follows:
4 (a) The board shall have the power to release on medical parole any
5 inmate serving an indeterminate or determinate sentence of imprisonment
6 who, pursuant to subdivision two of this section, has been certified to
7 be suffering from a terminal condition, disease or syndrome and to be so
8 debilitated or incapacitated as to create a reasonable probability that
9 he or she is physically or cognitively incapable of presenting [any] A
10 danger to society, provided, however, that no inmate serving a sentence
11 imposed upon a conviction for murder in the first degree or an attempt
12 or conspiracy to commit murder in the first degree shall be eligible for
13 such release, and provided further that no inmate serving a sentence
14 imposed upon a conviction for any of the following offenses shall be
15 eligible for such release unless in the case of an indeterminate
16 sentence he or she has served at least one-half of the minimum period of
17 the sentence and in the case of a determinate sentence he or she has
18 served at least one-half of the term of his or her determinate sentence:
19 murder in the second degree, manslaughter in the first degree, any
20 offense defined in article one hundred thirty of the penal law or an
21 attempt to commit any of these offenses. Solely for the purpose of
22 determining medical parole eligibility pursuant to this section, such
23 one-half of the minimum period of the indeterminate sentence and one-
24 half of the term of the determinate sentence shall not be credited with
25 any time served under the jurisdiction of the department prior to the
26 commencement of such sentence pursuant to the opening paragraph of
27 subdivision one of section 70.30 of the penal law or subdivision two-a
28 of section 70.30 of the penal law, except to the extent authorized by
29 subdivision three of section 70.30 of the penal law.

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

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1 S 2. Paragraph (a) of subdivision 1 of section 259-r of the executive
2 law, as amended by section 38-1-1 of subpart A of part C of chapter 62
3 of the laws of 2011, is amended to read as follows:

4 (a) The board shall have the power to release on medical parole any
5 inmate serving an indeterminate or determinate sentence of imprisonment
6 who, pursuant to subdivision two of this section, has been certified to
7 be suffering from a terminal condition, disease or syndrome and to be so
8 debilitated or incapacitated as to create a reasonable probability that
9 he or she is physically or cognitively incapable of presenting [any] A
10 danger to society, provided, however, that no inmate serving a sentence
11 imposed upon a conviction for murder in the first degree or an attempt
12 or conspiracy to commit murder in the first degree shall be eligible for
13 such release, and provided further that no inmate serving a sentence
14 imposed upon a conviction for any of the following offenses shall be
15 eligible for such release unless in the case of an indeterminate
16 sentence he or she has served at least one-half of the minimum period of
17 the sentence and in the case of a determinate sentence he or she has
18 served at least one-half of the term of his or her determinate sentence:
19 murder in the second degree, manslaughter in the first degree, any
20 offense defined in article one hundred thirty of the penal law or an
21 attempt to commit any of these offenses. Solely for the purpose of
22 determining medical parole eligibility pursuant to this section, such
23 one-half of the minimum period of the indeterminate sentence and one-
24 half of the term of the determinate sentence shall not be credited with
25 any time served under the jurisdiction of the department prior to the
26 commencement of such sentence pursuant to the opening paragraph of
27 subdivision one of section 70.30 of the penal law or subdivision two-a
28 of section 70.30 of the penal law, except to the extent authorized by
29 subdivision three of section 70.30 of the penal law.

30 S 3. Paragraph (b) of subdivision 2 of section 259-r of the executive
31 law, as amended by section 38-1 of subpart A of part C of chapter 62 of
32 the laws of 2011, is amended to read as follows:

33 (b) The commissioner, or the commissioner's designee, shall review the
34 diagnosis and may certify that the inmate is suffering from such termi-
35 nal condition, disease or syndrome and that the inmate is so debilitated
36 or incapacitated as to [create a reasonable probability that he or she
37 is physically or cognitively incapable of presenting any danger to soci-
38 ety] BE SEVERLY RESTRICTED IN HIS OR HER ABILITY TO SELF-AMBULATE OR TO
39 PERFORM SIGNIFICANT NORMAL ACTIVITIES OF DAILY LIVING. If the commis-
40 sioner does not so certify then the inmate shall not be referred to the
41 board for consideration for release on medical parole. If the commis-
42 sioner does so certify, then the commissioner shall, within seven work-
43 ing days of receipt of such diagnosis, refer the inmate to the board for
44 consideration for release on medical parole. However, no such referral
45 of an inmate to the board shall be made unless the inmate has been exam-
46 ined by a physician and diagnosed as having a terminal condition,
47 disease or syndrome as previously described herein at some time subse-
48 quent to such inmate's admission to a facility operated by the depart-
49 ment of correctional services.

50 S 4. Subdivision 4 of section 259-r of the executive law, as amended
51 by section 38-1 of subpart A of part C of chapter 62 of the laws of
52 2011, is amended to read as follows:

53 4. (a) THE BOARD SHALL, UPON RECEIPT OF CERTIFICATION FROM THE COMMIS-
54 SIONER, INDEPENDENTLY DETERMINE WHETHER THE CONDITIONS UNDER WHICH THE
55 INMATE WOULD BE RELEASED CREATES A REASONABLE PROBABILITY THAT HE OR SHE
56 IS PHYSICALLY OR COGNITIVELY INCAPABLE OF PRESENTING A DANGER TO SOCIE-

1 TY. THE BOARD SHALL PROVIDE A DETERMINATION OF RELEASE WITHIN THIRTY
2 DAYS UPON RECEIPT OF CERTIFICATION FROM THE COMMISSIONER.

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

5 [(b)] (C) The board shall require as a condition of release on medical
6 parole that the releasee agree to remain under the care of a physician
7 while on medical parole and in a hospital established pursuant to arti-
8 cle twenty-eight of the public health law, a hospice established pursu-
9 ant to article forty of the public health law or any other placement
10 that can provide appropriate medical care as specified in the medical
11 discharge plan required by subdivision two of this section. The medical
12 discharge plan shall state that the availability of the placement has
13 been confirmed, and by whom. Notwithstanding any other provision of law,
14 when an inmate who qualifies for release under this section is cogni-
15 tively incapable of signing the requisite documentation to effectuate
16 the medical discharge plan and, after a diligent search no person has
17 been identified who could otherwise be appointed as the inmate's guardi-
18 an by a court of competent jurisdiction, then, solely for the purpose of
19 implementing the medical discharge plan, the facility health services
20 director at the facility where the inmate is currently incarcerated
21 shall be lawfully empowered to act as the inmate's guardian for the
22 purpose of effectuating the medical discharge.

23 [(c)] (D) Where appropriate, the board shall require as a condition of
24 release that medical parolees be supervised on intensive caseloads at
25 reduced supervision ratios.

26 [(d)] (E) The board shall require as a condition of release on medical
27 parole that the releasee undergo periodic medical examinations and a
28 medical examination at least one month prior to the expiration of the
29 period of medical parole and, for the purposes of making a decision
30 pursuant to paragraph [(e)] (F) of this subdivision, that the releasee
31 provide the board with a report, prepared by the treating physician, of
32 the results of such examination. Such report shall specifically state
33 whether or not the parolee continues to suffer from a terminal condi-
34 tion, disease, or syndrome, and to be so debilitated or incapacitated as
35 to be severely restricted in his or her ability to self-ambulate or to
36 perform significant normal activities of daily living.

37 [(e)] (F) Prior to the expiration of the period of medical parole the
38 board shall review the medical examination report required by paragraph
39 [(d)] (E) of this subdivision and may again grant medical parole pursu-
40 ant to this section; provided, however, that the provisions of paragraph
41 (c) of subdivision one and subdivision two of this section shall not
42 apply.

43 [(f)] (G) If the updated medical report presented to the board states
44 that a parolee released pursuant to this section is no longer so debili-
45 tated or incapacitated as to create a reasonable probability that he or
46 she is physically or cognitively incapable of presenting [any] A danger
47 to society or if the releasee fails to submit the updated medical report
48 then the board may not make a new grant of medical parole pursuant to
49 paragraph [(e)] (F) of this subdivision. Where the board has not granted
50 medical parole pursuant to such paragraph [(e)] (F) the board shall
51 promptly conduct through one of its members, or cause to be conducted by
52 a hearing officer designated by the board, a hearing to determine wheth-
53 er the releasee is suffering from a terminal condition, disease or
54 syndrome and is so debilitated or incapacitated as to create a reason-
55 able probability that he or she is physically or cognitively incapable
56 of presenting [any danger to society and does not present] a danger to

1 society. If the board makes such a determination then it may make a new
2 grant of medical parole pursuant to the standards of paragraph (b) of
3 subdivision one of this section. At the hearing, the releasee shall have
4 the right to representation by counsel, including the right, if the
5 releasee is financially unable to retain counsel, to have the appropri-
6 ate court assign counsel in accordance with the county or city plan for
7 representation placed in operation pursuant to article eighteen-B of the
8 county law.

9 [(g)] (H) The hearing and determination provided for by paragraph
10 [(f)] (G) of this subdivision shall be concluded within the six month
11 period of medical parole. If the board does not renew the grant of
12 medical parole, it shall order that the releasee be returned immediately
13 to the custody of the department.

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

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

24 S 5. Paragraph (a) of subdivision 1 of section 259-s of the executive
25 law, as amended by section 38-m of subpart A of part C of chapter 62 of
26 the laws of 2011, is amended to read as follows:

27 (a) The board shall have the power to release on medical parole any
28 inmate serving an indeterminate or determinate sentence of imprisonment
29 who, pursuant to subdivision two of this section, has been certified to
30 be suffering from a significant and permanent non-terminal condition,
31 disease or syndrome that has rendered the inmate so physically or cogni-
32 tively debilitated or incapacitated as to create a reasonable probabili-
33 ty that he or she does not present [any] A danger to society, provided,
34 however, that no inmate serving a sentence imposed upon a conviction for
35 murder in the first degree or an attempt or conspiracy to commit murder
36 in the first degree shall be eligible for such release, and provided
37 further that no inmate serving a sentence imposed upon a conviction for
38 any of the following offenses shall be eligible for such release unless
39 in the case of an indeterminate sentence he or she has served at least
40 one-half of the minimum period of the sentence and in the case of a
41 determinate sentence he or she has served at least one-half of the term
42 of his or her determinate sentence: murder in the second degree,
43 manslaughter in the first degree, any offense defined in article one
44 hundred thirty of the penal law or an attempt to commit any of these
45 offenses. Solely for the purpose of determining medical parole eligibil-
46 ity pursuant to this section, such one-half of the minimum period of the
47 indeterminate sentence and one-half of the term of the determinate
48 sentence shall not be credited with any time served under the jurisdic-
49 tion of the department prior to the commencement of such sentence pursu-
50 ant to the opening paragraph of subdivision one of section 70.30 of the
51 penal law or subdivision two-a of section 70.30 of the penal law, except
52 to the extent authorized by subdivision three of section 70.30 of the
53 penal law.

54 S 6. Paragraph (b) of subdivision 2 of section 259-s of the executive
55 law, as amended by section 38-m of subpart A of part C of chapter 62 of
56 the laws of 2011, is amended to read as follows:

1 (b) The commissioner, or the commissioner's designee, shall review the
2 diagnosis and may certify that the inmate is suffering from such condi-
3 tion, disease or syndrome and that the inmate is so debilitated or inca-
4 pacitated as to [create a reasonable probability that he or she is phys-
5 ically or cognitively incapable of presenting any danger to society] BE
6 SEVERELY RESTRICTED IN HIS OR HER ABILITY TO SELF-AMBULATE OR TO PERFORM
7 SIGNIFICANT NORMAL ACTIVITIES OF DAILY LIVING. If the commissioner does
8 not so certify then the inmate shall not be referred to the board for
9 consideration for release on medical parole. If the commissioner does
10 so certify, then the commissioner shall, within seven working days of
11 receipt of such diagnosis, refer the inmate to the board for consider-
12 ation for release on medical parole. However, no such referral of an
13 inmate to the board of parole shall be made unless the inmate has been
14 examined by a physician and diagnosed as having a condition, disease or
15 syndrome as previously described herein at some time subsequent to such
16 inmate's admission to a facility operated by the department.

17 S 7. Subdivision 4 of section 259-s of the executive law, as amended
18 by section 38-m of subpart A of part C of chapter 62 of the laws of
19 2011, is amended to read as follows:

20 4. (a) THE BOARD SHALL, UPON RECEIPT OF CERTIFICATION FROM THE COMMIS-
21 SIONER, INDEPENDENTLY DETERMINE WHETHER THE CONDITIONS UNDER WHICH THE
22 INMATE WOULD BE RELEASED CREATES A REASONABLE PROBABILITY THAT HE OR SHE
23 IS PHYSICALLY OR COGNITIVELY INCAPABLE OF PRESENTING A DANGER TO SOCIE-
24 TY. THE BOARD SHALL PROVIDE A DETERMINATION OF RELEASE WITHIN THIRTY
25 DAYS UPON RECEIPT OF CERTIFICATION FROM THE COMMISSIONER.

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

28 [(b)] (C) The board shall require as a condition of release on medical
29 parole that the releasee agree to remain under the care of a physician
30 while on medical parole and in a hospital established pursuant to arti-
31 cle twenty-eight of the public health law, a hospice established pursu-
32 ant to article forty of the public health law or any other placement,
33 including a residence with family or others, that can provide appropri-
34 ate medical care as specified in the medical discharge plan required by
35 subdivision two of this section. The medical discharge plan shall state
36 that the availability of the placement has been confirmed, and by whom.
37 Notwithstanding any other provision of law, when an inmate who qualifies
38 for release under this section is cognitively incapable of signing the
39 requisite documentation to effectuate the medical discharge plan and,
40 after a diligent search no person has been identified who could other-
41 wise be appointed as the inmate's guardian by a court of competent
42 jurisdiction, then, solely for the purpose of implementing the medical
43 discharge plan, the facility health services director at the facility
44 where the inmate is currently incarcerated shall be lawfully empowered
45 to act as the inmate's guardian for the purpose of effectuating the
46 medical discharge.

47 [(c)] (D) Where appropriate, the board shall require as a condition of
48 release that medical parolees be supervised on intensive caseloads at
49 reduced supervision ratios.

50 [(d)] (E) The board shall require as a condition of release on medical
51 parole that the releasee undergo periodic medical examinations and a
52 medical examination at least one month prior to the expiration of the
53 period of medical parole and, for the purposes of making a decision
54 pursuant to paragraph [(e)] (F) of this subdivision, that the releasee
55 provide the board with a report, prepared by the treating physician, of
56 the results of such examination. Such report shall specifically state

1 whether or not the parolee continues to suffer from a significant and
2 permanent non-terminal and debilitating condition, disease, or syndrome,
3 and to be so debilitated or incapacitated as to be severely restricted
4 in his or her ability to self-ambulate or to perform significant normal
5 activities of daily living.

6 [(e)] (F) Prior to the expiration of the period of medical parole the
7 board shall review the medical examination report required by paragraph
8 [(d)] (E) of this subdivision and may again grant medical parole pursu-
9 ant to this section; provided, however, that the provisions of paragraph
10 (c) of subdivision one and subdivision two of this section shall not
11 apply.

12 [(f)] (G) If the updated medical report presented to the board states
13 that a parolee released pursuant to this section is no longer so debili-
14 tated or incapacitated as to create a reasonable probability that he or
15 she is physically or cognitively incapable of presenting [any] A danger
16 to society or if the releasee fails to submit the updated medical report
17 then the board may not make a new grant of medical parole pursuant to
18 paragraph [(e)] (F) of this subdivision. Where the board has not granted
19 medical parole pursuant to [such] paragraph [(e)] (F) OF THIS SUBDIVI-
20 SION the board shall promptly conduct through one of its members, or
21 cause to be conducted by a hearing officer designated by the board, a
22 hearing to determine whether the releasee is suffering from a signif-
23 icant and permanent non-terminal and incapacitating condition, disease
24 or syndrome and is so debilitated or incapacitated as to create a
25 reasonable probability that he or she is physically or cognitively inca-
26 pable of presenting [any danger to society and does not present] a
27 danger to society. If the board makes such a determination then it may
28 make a new grant of medical parole pursuant to the standards of para-
29 graph (b) of subdivision one of this section. At the hearing, the
30 releasee shall have the right to representation by counsel, including
31 the right, if the releasee is financially unable to retain counsel, to
32 have the appropriate court assign counsel in accordance with the county
33 or city plan for representation placed in operation pursuant to article
34 eighteen-B of the county law.

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

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

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

50 S 8. This act shall take effect immediately; provided, however, that
51 the amendments to paragraph (a) of subdivision 1 of section 259-r of the
52 executive law made by section one of this act shall be subject to the
53 expiration and reversion of such paragraph pursuant to subdivision d of
54 section 74 of chapter 3 of the laws of 1995, as amended, when upon such
55 date the provisions of section two of this act shall take effect.