

9696

I N A S S E M B L Y

March 27, 2012

Introduced by M. of A. AUBRY, LENTOL, MILLMAN -- 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:
26 1. have the power and duty of determining which inmates serving an
27 indeterminate or determinate sentence of imprisonment may be released on
28 parole, or on medical parole pursuant to section two hundred

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

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1 fifty-nine-r or section two hundred fifty-nine-s OR GERIATRIC PAROLE
2 PURSUANT TO SECTION TWO HUNDRED FIFTY-NINE-T of this article, and when
3 and under what conditions;

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

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

11 S 6. Subdivision 1 of section 259-j of the executive law, as amended
12 by section 38-g of subpart A of part C of chapter 62 of the laws of
13 2011, is amended to read as follows:

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

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

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

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

53 (C) THE BOARD SHALL AFFORD NOTICE TO THE SENTENCING COURT, THE
54 DISTRICT ATTORNEY AND THE ATTORNEY FOR SUCH INMATE THAT THE INMATE IS
55 BEING CONSIDERED FOR RELEASE PURSUANT TO THIS SECTION AND THE PARTIES
56 RECEIVING NOTICE SHALL HAVE FIFTEEN DAYS TO COMMENT ON THE RELEASE OF

1 THE INMATE. RELEASE TO GERIATRIC PAROLE SHALL NOT BE GRANTED UNTIL EXPI-
2 RATION OF THE COMMENT PERIOD PROVIDED FOR IN THIS PARAGRAPH.

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

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

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

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

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

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

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

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

32 7. THE COMMISSIONER AND THE CHAIRMAN OF THE STATE BOARD OF PAROLE
33 SHALL ANNUALLY REPORT TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE
34 SENATE AND THE SPEAKER OF THE ASSEMBLY, THE CHAIRS AND RANKING MINORITY
35 MEMBERS OF THE ASSEMBLY CODES COMMITTEE, THE SENATE CODES COMMITTEE, THE
36 ASSEMBLY CORRECTION COMMITTEE, THE SENATE CRIME VICTIMS, CRIME AND
37 CORRECTION COMMITTEE, THE ASSEMBLY WAYS AND MEANS COMMITTEE AND THE
38 SENATE FINANCE COMMITTEE THE NUMBER OF INMATES WHO HAVE APPLIED FOR
39 GERIATRIC PAROLE; THE NUMBER WHO HAVE BEEN GRANTED GERIATRIC PAROLE; THE
40 COUNTIES TO WHICH THEY HAVE BEEN RELEASED; THE AGES OF THE APPLICANTS;
41 THE CATEGORIES OF DENIAL FOR THOSE WHO HAVE BEEN DENIED; THE NUMBER OF
42 PAROLEES RELEASED TO GERIATRIC PAROLE WHO HAVE BEEN RETURNED TO IMPRI-
43 SONMENT IN THE CUSTODY OF THE DEPARTMENT AND THE REASONS FOR THEIR
44 RETURN; THE NUMBER OF ELIGIBLE INMATES IN DEPARTMENT CUSTODY WHO ARE
45 SIXTY YEARS OF AGE OR OVER AND AN ESTIMATE OF THE PROJECTED CORRECTIONAL
46 HEALTH CARE SERVICE SAVINGS WERE SUCH INMATES TO BE RELEASED TO PAROLE;
47 AS WELL AS THEIR RECOMMENDATIONS AND FINDINGS BY THE FIRST OF JANUARY
48 NEXT SUCCEEDING THE EFFECTIVE DATE OF THIS ACT AND EACH JANUARY THERE-
49 AFTER.

50 S 8. This act shall take effect on the one hundred eightieth day after
51 it shall have become a law; provided, however, that the amendments to
52 subdivision 1 of section 259-c of the executive law made by section four
53 of this act shall be subject to the expiration and reversion of such
54 subdivision pursuant to section 74-d of chapter 3 of the laws of 1995,
55 as amended, when upon such date the provisions of section five of this
56 act shall take effect.