

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

4594--A

2013-2014 Regular Sessions

I N A S S E M B L Y

February 6, 2013

Introduced by M. of A. O'DONNELL, LENTOL, MILLMAN, BRENNAN, AUBRY --
Multi-Sponsored by -- M. of A. JACOBS -- read once and referred to the
Committee on Correction -- recommitted to the Committee on Correction
in accordance with Assembly Rule 3, sec. 2 -- committee discharged,
bill amended, ordered reprinted as amended and recommitted to said
committee

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 ASSEM-
BLY, 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,

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

LBD06250-02-4

1 parole, conditional release, post release supervision [or], medical
2 parole OR GERIATRIC PAROLE.

3 S 4. Subdivision 1 of section 259-c of the executive law, as amended
4 by section 38-b of subpart A of part C of chapter 62 of the laws of
5 2011, is amended to read as follows:

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

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

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

19 S 6. Subdivision 1 of section 259-j of the executive law, as amended
20 by section 38-g of subpart A of part C of chapter 62 of the laws of
21 2011, is amended to read as follows:

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

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

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

55 (B) SUCH RELEASE MAY BE GRANTED ONLY AFTER THE BOARD CONSIDERS WHETHER
56 THERE IS A REASONABLE PROBABILITY THAT, IF RELEASED, THE INMATE WILL

1 LIVE AND REMAIN AT LIBERTY WITHOUT VIOLATING THE LAW, AND THAT SUCH
2 RELEASE IS NOT INCOMPATIBLE WITH THE WELFARE OF SOCIETY AND WILL NOT SO
3 DEPRECATE THE SERIOUSNESS OF THE CRIME AS TO UNDERMINE RESPECT FOR THE
4 LAW.

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

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

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

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

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

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

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

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

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

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

1 NEXT SUCCEEDING THE EFFECTIVE DATE OF THIS ACT AND EACH JANUARY THERE-
2 AFTER.

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