

2015-2016 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2015

Introduced by M. of A. O'DONNELL, AUBRY, GOTTFRIED -- 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

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

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1 commencement of such sentence pursuant to the opening paragraph of  
2 subdivision one of section 70.30 of the penal law or subdivision two-a  
3 of section 70.30 of the penal law, except to the extent authorized by  
4 subdivision three of section 70.30 of the penal law.

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

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

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

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

54 S 4. Subdivision 4 of section 259-r of the executive law, as amended  
55 by section 38-1 of subpart A of part C of chapter 62 of the laws of  
56 2011, is amended to read as follows:

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

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

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

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

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

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

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

1 er the releasee is suffering from a terminal condition, disease or  
2 syndrome and is so debilitated or incapacitated as to create a reason-  
3 able probability that he or she is physically or cognitively incapable  
4 of presenting [any danger to society and does not present] a danger to  
5 society. If the board makes such a determination then it may make a new  
6 grant of medical parole pursuant to the standards of paragraph (b) of  
7 subdivision one of this section. At the hearing, the releasee shall have  
8 the right to representation by counsel, including the right, if the  
9 releasee is financially unable to retain counsel, to have the appropri-  
10 ate court assign counsel in accordance with the county or city plan for  
11 representation placed in operation pursuant to article eighteen-B of the  
12 county law.

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

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

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

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

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

1 to the extent authorized by subdivision three of section 70.30 of the  
2 penal law.

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

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

22 S 7. Subdivision 4 of section 259-s of the executive law, as amended  
23 by section 38-m of subpart A of part C of chapter 62 of the laws of  
24 2011, is amended to read as follows:

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

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

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

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

55 [(d)] (E) The board shall require as a condition of release on medical  
56 parole that the releasee undergo periodic medical examinations and a

1 medical examination at least one month prior to the expiration of the  
2 period of medical parole and, for the purposes of making a decision  
3 pursuant to paragraph [(e)] (F) of this subdivision, that the releasee  
4 provide the board with a report, prepared by the treating physician, of  
5 the results of such examination. Such report shall specifically state  
6 whether or not the parolee continues to suffer from a significant and  
7 permanent non-terminal and debilitating condition, disease, or syndrome,  
8 and to be so debilitated or incapacitated as to be severely restricted  
9 in his or her ability to self-ambulate or to perform significant normal  
10 activities of daily living.

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

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

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

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

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

55 S 8. This act shall take effect immediately; provided, however, that  
56 the amendments to paragraph (a) of subdivision 1 of section 259-r of the

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