

7863

I N S E N A T E

May 18, 2016

Introduced by Sen. HASSELL-THOMPSON -- read twice and ordered printed,
and when printed to be committed to the Committee on Crime Victims,
Crime and Correction

AN ACT to amend the executive law, in relation to prohibiting medical
parole for persons convicted of an act of terrorism

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

1 Section 1. Section 259-r of the executive law, as amended by section
2 38-1 of subpart A of part C of chapter 62 of the laws of 2011, subdivi-
3 sions 10 and 11 as added by section 1 of part A of chapter 55 of the
4 laws of 2015, is amended to read as follows:
5 S 259-r. Release on medical parole for terminally ill inmates. 1. (a)
6 The [board] COMMISSIONER shall have the power to release on medical
7 parole any inmate serving an indeterminate or determinate sentence of
8 imprisonment who, pursuant to subdivision two of this section, has been
9 certified to be suffering from a terminal condition, disease or syndrome
10 and to be so debilitated or incapacitated as to create a reasonable
11 probability that he or she is physically or cognitively incapable of
12 presenting any danger to society, provided, however, that no inmate
13 serving a sentence imposed upon a conviction for [murder in the first
14 degree or an attempt or conspiracy to commit murder in the first degree
15 shall be eligible for such release, and provided further that no inmate
16 serving a sentence imposed upon a conviction for any of the following
17 offenses shall be eligible for such release unless in the case of an
18 indeterminate sentence he or she has served at least one-half of the
19 minimum period of the sentence and in the case of a determinate sentence
20 he or she has served at least one-half of the term of his or her deter-
21 minate sentence: murder in the second degree, manslaughter in the first
22 degree, any offense defined in article one hundred thirty of the penal
23 law or an attempt to commit any of these offenses. Solely for the
24 purpose of determining medical parole eligibility pursuant to this
25 section, such one-half of the minimum period of the indeterminate
26 sentence and one-half of the term of the determinate sentence shall not
27 be credited with any time served under the jurisdiction of the depart-

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

LBD14530-02-6

1 ment prior to the commencement of such sentence pursuant to the opening
2 paragraph of subdivision one of section 70.30 of the penal law or subdivi-
3 sion two-a of section 70.30 of the penal law, except to the extent
4 authorized by subdivision three of section 70.30 of the penal law] AN
5 ACT OF TERRORISM AS DEFINED IN SECTION 490.05 OF THE PENAL LAW, SHALL BE
6 ELIGIBLE FOR SUCH RELEASE.

7 (b) Such release shall be granted only after the [board] COMMISSIONER
8 considers whether, in light of the inmate's medical condition, there is
9 a reasonable probability that the inmate, if released, will live and
10 remain at liberty without violating the law, and that such release is
11 not incompatible with the welfare of society and will not so deprecate
12 the seriousness of the crime as to undermine respect for the law, and
13 shall be subject to the limits and conditions specified in subdivision
14 four of this section. Except as set forth in paragraph (a) of this
15 subdivision, such release may be granted at any time during the term of
16 an inmate's sentence, notwithstanding any other provision of law.

17 [(c) The board shall afford notice to the sentencing court, the
18 district attorney and the attorney for the inmate that the inmate is
19 being considered for release pursuant to this section and the parties
20 receiving notice shall have fifteen days to comment on the release of
21 the inmate. Release on medical parole shall not be granted until the
22 expiration of the comment period provided for in this paragraph.]

23 2. (a) The commissioner, on the commissioner's own initiative or at
24 the request of an inmate, or an inmate's spouse, relative or attorney,
25 may, in the exercise of the commissioner's discretion, direct that an
26 investigation be undertaken to determine whether a diagnosis should be
27 made of an inmate who appears to be suffering from a terminal condition,
28 disease or syndrome. Any such medical diagnosis shall be made by a
29 physician licensed to practice medicine in this state pursuant to
30 section sixty-five hundred twenty-four of the education law. Such physi-
31 cian shall either be employed by the department, shall render profes-
32 sional services at the request of the department, or shall be employed
33 by a hospital or medical facility used by the department for the medical
34 treatment of inmates. The diagnosis shall be reported to the commission-
35 er and shall include but shall not be limited to a description of the
36 terminal condition, disease or syndrome suffered by the inmate, a prog-
37 nosis concerning the likelihood that the inmate will not recover from
38 such terminal condition, disease or syndrome, a description of the
39 inmate's physical or cognitive incapacity which shall include a predic-
40 tion respecting the likely duration of the incapacity, and a statement
41 by the physician of whether the inmate is so debilitated or incapaci-
42 tated as to be severely restricted in his or her ability to self-ambu-
43 late or to perform significant normal activities of daily living. This
44 report also shall include a recommendation of the type and level of
45 services and treatment the inmate would require if granted medical
46 parole and a recommendation for the types of settings in which the
47 services and treatment should be given.

48 (b) The commissioner, or the commissioner's designee, shall review the
49 diagnosis and may certify that the inmate is suffering from such termi-
50 nal condition, disease or syndrome and that the inmate is so debilitated
51 or incapacitated as to create a reasonable probability that he or she is
52 physically or cognitively incapable of presenting [any] A danger to
53 society. [If the commissioner does not so certify then the inmate shall
54 not be referred to the board for consideration for release on medical
55 parole.] If the commissioner does so certify, then the commissioner
56 shall, within seven working days of receipt of such diagnosis, refer the

1 inmate [to the board for consideration] for release on medical parole.
2 However, no [such referral of an inmate to the board] RELEASE shall be
3 made unless the inmate has been examined by a physician and diagnosed as
4 having a terminal condition, disease or syndrome as previously described
5 herein at some time subsequent to such inmate's admission to a facility
6 operated by the department of correctional services.

7 (c) [When the commissioner refers an inmate to the board, the] THE
8 commissioner shall provide an appropriate medical discharge plan estab-
9 lished by the department. The department is authorized to request
10 assistance from the department of health and from the county in which
11 the inmate resided and committed his or her crime, which shall provide
12 assistance with respect to the development and implementation of a
13 discharge plan, including potential placements of a releasee. The
14 department and the department of health shall jointly develop standards
15 for the medical discharge plan that are appropriately adapted to the
16 criminal justice setting, based on standards established by the depart-
17 ment of health for hospital medical discharge planning. The [board]
18 COMMISSIONER may postpone its decision pending completion of an adequate
19 discharge plan, or may deny release based on inadequacy of the discharge
20 plan.

21 3. Any certification by the commissioner or the commissioner's desig-
22 nee pursuant to this section shall be deemed a judicial function and
23 shall not be reviewable if done in accordance with law.

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

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

44 (c) Where appropriate, the [board] COMMISSIONER shall require as a
45 condition of release that medical parolees be supervised on intensive
46 caseloads at reduced supervision ratios.

47 (d) The [board] COMMISSIONER shall require as a condition of release
48 on medical parole that the releasee undergo periodic medical examina-
49 tions and a medical examination at least one month prior to the expira-
50 tion of the period of medical parole and, for the purposes of making a
51 decision pursuant to paragraph (e) of this subdivision, that the releas-
52 ee provide the board with a report, prepared by the treating physician,
53 of the results of such examination. Such report shall specifically state
54 whether or not the parolee continues to suffer from a terminal condi-
55 tion, disease, or syndrome, and to be so debilitated or incapacitated as

1 to be severely restricted in his or her ability to self-ambulate or to
2 perform significant normal activities of daily living.

3 (e) Prior to the expiration of the period of medical parole the
4 [board] COMMISSIONER shall review the medical examination report
5 required by paragraph (d) of this subdivision and may again grant
6 medical parole pursuant to this section; provided, however, that the
7 provisions of [paragraph (c) of subdivision one and] subdivision two of
8 this section shall not apply.

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

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

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

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

47 5. A denial of release on medical parole or expiration of medical
48 parole in accordance with the provisions of paragraph (f) of subdivision
49 four of this section shall not preclude the inmate from reapplying for
50 medical parole or otherwise affect an inmate's eligibility for any other
51 form of release provided for by law.

52 6. To the extent that any provision of this section requires disclo-
53 sure of medical information for the purpose of processing an application
54 or making a decision, regarding release on medical parole or renewal of
55 medical parole, or for the purpose of appropriately supervising a person
56 released on medical parole, and that such disclosure would otherwise be

1 prohibited by article twenty-seven-F of the public health law, the
2 provisions of this section shall be controlling.

3 7. The commissioner [and the chairman of the board] shall be author-
4 ized to promulgate rules and regulations for their respective agencies
5 to implement the provisions of this section.

6 8. Any decision made by the [board] COMMISSIONER pursuant to this
7 section may be appealed pursuant to subdivision four of section two
8 hundred fifty-nine-i of this article.

9 9. The [chairman] COMMISSIONER shall report annually to the governor,
10 the temporary president of the senate and the speaker of the assembly,
11 the chairpersons of the assembly and senate codes committees, the chair-
12 person of the senate crime and corrections committee, and the chair-
13 person of the assembly corrections committee the number of inmates who
14 have applied for medical parole; the number who have been granted
15 medical parole; the nature of the illness of the applicants, the coun-
16 ties to which they have been released and the nature of the placement
17 pursuant to the medical discharge plan; the categories of reasons for
18 denial for those who have been denied; the number of releasees who have
19 been granted an additional period or periods of medical parole and the
20 number of such grants; the number of releasees on medical parole who
21 have been returned to imprisonment in the custody of the department and
22 the reasons for return.

23 [10. Notwithstanding any other provision of law, in the case of an
24 inmate whose terminal condition, disease or syndrome meets the criteria
25 for medical parole as set forth in paragraph (a) of subdivision one of
26 this section, and who is not serving a sentence for one or more offenses
27 set forth in paragraph (i) of subdivision one of section eight hundred
28 six of the correction law which would render such inmate ineligible for
29 presumptive release, the granting of medical parole shall be determined
30 by the commissioner provided that a release of such inmate shall be in
31 accordance with subdivision eleven of this section. In such case, the
32 provisions that would have applied to and the procedures that would have
33 been followed by the board of parole pursuant to this section shall
34 apply to and be followed by the commissioner.

35 11. (a) After the commissioner has made a determination to grant
36 medical parole pursuant to subdivision ten of this section, the commis-
37 sioner shall notify the chairperson of the board of parole, or their
38 designee who shall be a member of the board of parole, and provide him
39 or her with all relevant records, files, information and documentation,
40 which includes but is not limited to the criminal history, medical diag-
41 nosis and treatment pertaining to the terminally ill inmate no more than
42 five days from the date of the determination. (b) The chairperson or his
43 or her designee shall either accept the commissioner's grant of medical
44 parole, in which case the inmate may be released by the commissioner, or
45 conduct further review. This decision or review shall be made within
46 five days of the receipt of the relevant records, files, information and
47 documentation from the commissioner. The chairperson's further review
48 may include, but not be limited to, an appearance by the terminally ill
49 inmate before the chairperson or his or her designee. (c) After this
50 further review, the chairperson shall either accept the commissioner's
51 grant of medical parole, in which case the inmate may be released by the
52 commissioner, or the chairperson shall schedule an appearance for the
53 terminally ill inmate before the board of parole.

54 In the event the terminally ill inmate is scheduled to make an appear-
55 ance before the board of parole pursuant to this subdivision, the matter
56 shall be heard by a panel that does not include the chairperson or any

1 member of the board of parole who was involved in the review of the
2 commissioner's determination.]

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

6 (a) The [board] COMMISSIONER shall have the power to release on
7 medical parole any inmate serving an indeterminate or determinate
8 sentence of imprisonment who, pursuant to subdivision two of this
9 section, has been certified to be suffering from a terminal condition,
10 disease or syndrome and to be so debilitated or incapacitated as to
11 create a reasonable probability that he or she is physically or cogni-
12 tively incapable of presenting any danger to society, provided, however,
13 that no inmate serving a sentence imposed upon a conviction for [murder
14 in the first degree or an attempt or conspiracy to commit murder in the
15 first degree shall be eligible for such release, and provided further
16 that no inmate serving a sentence imposed upon a conviction for any of
17 the following offenses shall be eligible for such release unless in the
18 case of an indeterminate sentence he or she has served at least one-half
19 of the minimum period of the sentence and in the case of a determinate
20 sentence he or she has served at least one-half of the term of his or
21 her determinate sentence: murder in the second degree, manslaughter in
22 the first degree, any offense defined in article one hundred thirty of
23 the penal law or an attempt to commit any of these offenses. Solely for
24 the purpose of determining medical parole eligibility pursuant to this
25 section, such one-half of the minimum period of the indeterminate
26 sentence and one-half of the term of the determinate sentence shall not
27 be credited with any time served under the jurisdiction of the depart-
28 ment prior to the commencement of such sentence pursuant to the opening
29 paragraph of subdivision one of section 70.30 of the penal law or subdivi-
30 sion two-a of section 70.30 of the penal law, except to the extent
31 authorized by subdivision three of section 70.30 of the penal law] AN
32 ACT OF TERRORISM AS DEFINED IN SECTION 490.05 OF THE PENAL LAW, SHALL BE
33 ELIGIBLE FOR SUCH RELEASE.

34 S 3. Section 259-s of the executive law, as amended by section 38-m of
35 subpart A of part C of chapter 62 of the laws of 2011, is amended to
36 read as follows:

37 S 259-s. Release on medical parole for inmates suffering significant
38 debilitating illnesses. 1. (a) The [board] COMMISSIONER shall have the
39 power to release on medical parole any inmate serving an indeterminate
40 or determinate sentence of imprisonment who, pursuant to subdivision two
41 of this section, has been certified to be suffering from a significant
42 and permanent non-terminal condition, disease or syndrome that has
43 rendered the inmate so physically or cognitively debilitated or incapaci-
44 tated as to create a reasonable probability that he or she does not
45 present any danger to society, provided, however, that no inmate serving
46 a sentence imposed upon a conviction for [murder in the first degree or
47 an attempt or conspiracy to commit murder in the first degree shall be
48 eligible for such release, and provided further that no inmate serving a
49 sentence imposed upon a conviction for any of the following offenses
50 shall be eligible for such release unless in the case of an indetermi-
51 nate sentence he or she has served at least one-half of the minimum
52 period of the sentence and in the case of a determinate sentence he or
53 she has served at least one-half of the term of his or her determinate
54 sentence: murder in the second degree, manslaughter in the first
55 degree, any offense defined in article one hundred thirty of the penal
56 law or an attempt to commit any of these offenses. Solely for the

1 purpose of determining medical parole eligibility pursuant to this
2 section, such one-half of the minimum period of the indeterminate
3 sentence and one-half of the term of the determinate sentence shall not
4 be credited with any time served under the jurisdiction of the depart-
5 ment prior to the commencement of such sentence pursuant to the opening
6 paragraph of subdivision one of section 70.30 of the penal law or subdivi-
7 sion two-a of section 70.30 of the penal law, except to the extent
8 authorized by subdivision three of section 70.30 of the penal law] AN
9 ACT OF TERRORISM AS DEFINED IN SECTION 490.05 OF THE PENAL LAW, SHALL BE
10 ELIGIBLE FOR SUCH RELEASE.

11 (b) Such release shall be granted only after the [board] COMMISSIONER
12 considers whether, in light of the inmate's medical condition, there is
13 a reasonable probability that the inmate, if released, will live and
14 remain at liberty without violating the law, and that such release is
15 not incompatible with the welfare of society and will not so deprecate
16 the seriousness of the crime as to undermine respect for the law, and
17 shall be subject to the limits and conditions specified in subdivision
18 four of this section. In making this determination, the [board] COMMIS-
19 SIONER shall consider: (i) the nature and seriousness of the inmate's
20 crime; (ii) the inmate's prior criminal record; (iii) the inmate's
21 disciplinary, behavioral and rehabilitative record during the term of
22 his or her incarceration; (iv) [the amount of time the inmate must serve
23 before becoming eligible for release pursuant to section two hundred
24 fifty-nine-i of this article; (v)] the current age of the inmate and his
25 or her age at the time of the crime; [(vi) the recommendations of the
26 sentencing court, the district attorney and the victim or the victim's
27 representative; (vii)] (V) the nature of the inmate's medical condition,
28 disease or syndrome and the extent of medical treatment or care that the
29 inmate will require as a result of that condition, disease or syndrome;
30 and [(viii)] (VI) any other relevant factor. Except as set forth in
31 paragraph (a) of this subdivision, such release may be granted at any
32 time during the term of an inmate's sentence, notwithstanding any other
33 provision of law.

34 [(c) The board shall afford notice to the sentencing court, the
35 district attorney, the attorney for the inmate and, where necessary
36 pursuant to subdivision two of section two hundred fifty-nine-i of this
37 article, the crime victim, that the inmate is being considered for
38 release pursuant to this section and the parties receiving notice shall
39 have thirty days to comment on the release of the inmate. Release on
40 medical parole shall not be granted until the expiration of the comment
41 period provided for in this paragraph.]

42 2. (a) The commissioner, on the commissioner's own initiative or at
43 the request of an inmate, or an inmate's spouse, relative or attorney,
44 may, in the exercise of the commissioner's discretion, direct that an
45 investigation be undertaken to determine whether a diagnosis should be
46 made of an inmate who appears to be suffering from a significant and
47 permanent non-terminal and incapacitating condition, disease or
48 syndrome. Any such medical diagnosis shall be made by a physician
49 licensed to practice medicine in this state pursuant to section sixty-
50 five hundred twenty-four of the education law. Such physician shall
51 either be employed by the department, shall render professional services
52 at the request of the department, or shall be employed by a hospital or
53 medical facility used by the department for the medical treatment of
54 inmates. The diagnosis shall be reported to the commissioner and shall
55 include but shall not be limited to a description of the condition,
56 disease or syndrome suffered by the inmate, a prognosis concerning the

1 likelihood that the inmate will not recover from such condition, disease
2 or syndrome, a description of the inmate's physical or cognitive inca-
3 pacity which shall include a prediction respecting the likely duration
4 of the incapacity, and a statement by the physician of whether the
5 inmate is so debilitated or incapacitated as to be severely restricted
6 in his or her ability to self-ambulate or to perform significant normal
7 activities of daily living. This report also shall include a recommenda-
8 tion of the type and level of services and treatment the inmate would
9 require if granted medical parole and a recommendation for the types of
10 settings in which the services and treatment should be given.

11 (b) The commissioner, or the commissioner's designee, shall review the
12 diagnosis and may certify that the inmate is suffering from such condi-
13 tion, disease or syndrome and that the inmate is so debilitated or inca-
14 pacitated as to create a reasonable probability that he or she is phys-
15 ically or cognitively incapable of presenting any danger to society. If
16 the commissioner does not so certify then the inmate shall not be
17 referred to the board for consideration for release on medical parole.
18 If the commissioner does so certify, then the commissioner shall, within
19 seven working days of receipt of such diagnosis, [refer the inmate to
20 the board for consideration for] release THE INMATE on medical parole.
21 However, no such referral of an inmate to the [board of parole] COMMIS-
22 SIONER shall be made unless the inmate has been examined by a physician
23 and diagnosed as having a condition, disease or syndrome as previously
24 described herein at some time subsequent to such inmate's admission to a
25 facility operated by the department.

26 (c) [When the commissioner refers an inmate to the board, the] THE
27 commissioner shall provide an appropriate medical discharge plan estab-
28 lished by the department. The department is authorized to request
29 assistance from the department of health and from the county in which
30 the inmate resided and committed his or her crime, which shall provide
31 assistance with respect to the development and implementation of a
32 discharge plan, including potential placements of a releasee. The
33 department and the department of health shall jointly develop standards
34 for the medical discharge plan that are appropriately adapted to the
35 criminal justice setting, based on standards established by the depart-
36 ment of health for hospital medical discharge planning. [The board may
37 postpone its decision pending completion of an adequate discharge plan,
38 or may deny release based on inadequacy of the discharge plan.]

39 3. Any certification by the commissioner or the commissioner's desig-
40 nee pursuant to this section shall be deemed a judicial function and
41 shall not be reviewable if done in accordance with law.

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

44 (b) The [board] COMMISSIONER shall require as a condition of release
45 on medical parole that the releasee agree to remain under the care of a
46 physician while on medical parole and in a hospital established pursuant
47 to article twenty-eight of the public health law, a hospice established
48 pursuant to article forty of the public health law or any other place-
49 ment, including a residence with family or others, that can provide
50 appropriate medical care as specified in the medical discharge plan
51 required by subdivision two of this section. The medical discharge plan
52 shall state that the availability of the placement has been confirmed,
53 and by whom. Notwithstanding any other provision of law, when an inmate
54 who qualifies for release under this section is cognitively incapable of
55 signing the requisite documentation to effectuate the medical discharge
56 plan and, after a diligent search no person has been identified who

1 could otherwise be appointed as the inmate's guardian by a court of
2 competent jurisdiction, then, solely for the purpose of implementing the
3 medical discharge plan, the facility health services director at the
4 facility where the inmate is currently incarcerated shall be lawfully
5 empowered to act as the inmate's guardian for the purpose of effectuat-
6 ing the medical discharge.

7 (c) Where appropriate, the [board] COMMISSIONER shall require as a
8 condition of release that medical parolees be supervised on intensive
9 caseloads at reduced supervision ratios.

10 (d) The [board] COMMISSIONER shall require as a condition of release
11 on medical parole that the releasee undergo periodic medical examina-
12 tions and a medical examination at least one month prior to the expira-
13 tion of the period of medical parole and, for the purposes of making a
14 decision pursuant to paragraph (e) of this subdivision, that the releas-
15 ee provide the [board] COMMISSIONER with a report, prepared by the
16 treating physician, of the results of such examination. Such report
17 shall specifically state whether or not the parolee continues to suffer
18 from a significant and permanent non-terminal and debilitating condi-
19 tion, disease, or syndrome, and to be so debilitated or incapacitated as
20 to be severely restricted in his or her ability to self-ambulate or to
21 perform significant normal activities of daily living.

22 (e) Prior to the expiration of the period of medical parole the
23 [board] COMMISSIONER shall review the medical examination report
24 required by paragraph (d) of this subdivision and may again grant
25 medical parole pursuant to this section; provided, however, that the
26 provisions of paragraph (c) of subdivision one and subdivision two of
27 this section shall not apply.

28 (f) If the updated medical report presented to the [board] COMMISSION-
29 ER states that a parolee released pursuant to this section is no longer
30 so debilitated or incapacitated as to create a reasonable probability
31 that he or she is physically or cognitively incapable of presenting
32 [any] A danger to society or if the releasee fails to submit the updated
33 medical report then the [board] COMMISSIONER may not make a new grant of
34 medical parole pursuant to paragraph (e) of this subdivision. Where the
35 [board] COMMISSIONER has not granted medical parole pursuant to such
36 paragraph (e) the [board] COMMISSIONER shall promptly conduct [through
37 one of its members,] or cause to be conducted by a hearing officer
38 [designated by the board,] a hearing to determine whether the releasee
39 is suffering from a significant and permanent non-terminal and incapaci-
40 tating condition, disease or syndrome and is so debilitated or incapaci-
41 tated as to create a reasonable probability that he or she is physically
42 or cognitively incapable of presenting any danger to society and does
43 not present a danger to society. If the [board] COMMISSIONER makes such
44 a determination then [it] HE OR SHE may make a new grant of medical
45 parole pursuant to the standards of paragraph (b) of subdivision one of
46 this section. At the hearing, the releasee shall have the right to
47 representation by counsel, including the right, if the releasee is
48 financially unable to retain counsel, to have the appropriate court
49 assign counsel in accordance with the county or city plan for represen-
50 tation placed in operation pursuant to article eighteen-B of the county
51 law.

52 (g) The hearing and determination provided for by paragraph (f) of
53 this subdivision shall be concluded within the six month period of
54 medical parole. If the [board] COMMISSIONER does not renew the grant of
55 medical parole, [it] HE OR SHE shall order that the releasee be returned
56 immediately to the custody of the department of correctional services.

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

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

11 5. A denial of release on medical parole or expiration of medical
12 parole in accordance with the provisions of paragraph (f) of subdivision
13 four of this section shall not preclude the inmate from reapplying for
14 medical parole or otherwise affect an inmate's eligibility for any other
15 form of release provided for by law.

16 6. To the extent that any provision of this section requires disclo-
17 sure of medical information for the purpose of processing an application
18 or making a decision, regarding release on medical parole or renewal of
19 medical parole, or for the purpose of appropriately supervising a person
20 released on medical parole, and that such disclosure would otherwise be
21 prohibited by article twenty-seven-F of the public health law, the
22 provisions of this section shall be controlling.

23 7. The commissioner [and the chair of the board] shall be authorized
24 to promulgate rules and regulations for [their] HIS OR HER respective
25 [agencies] AGENCY to implement the provisions of this section.

26 8. Any decision made by the [board] COMMISSIONER pursuant to this
27 section may be appealed pursuant to subdivision four of section two
28 hundred fifty-nine-i of this article.

29 9. The [chair of the board] COMMISSIONER shall report annually to the
30 governor, the temporary president of the senate and the speaker of the
31 assembly, the chairpersons of the assembly and senate codes committees,
32 the chairperson of the senate crime and corrections committee, and the
33 chairperson of the assembly corrections committee the number of inmates
34 who have applied for medical parole under this section; the number who
35 have been granted medical parole; the nature of the illness of the
36 applicants, the counties to which they have been released and the nature
37 of the placement pursuant to the medical discharge plan; the categories
38 of reasons for denial for those who have been denied; the number of
39 releasees who have been granted an additional period or periods of
40 medical parole and the number of such grants; the number of releasees on
41 medical parole who have been returned to imprisonment in the custody of
42 the department and the reasons for return.

43 S 4. This act shall take effect immediately, provided, however, that
44 the amendments to paragraph (a) of subdivision 1 of section 259-r of the
45 executive law made by section one of this act shall be subject to the
46 expiration and reversion of such paragraph pursuant to subdivision d of
47 section 74 of chapter 3 of the laws of 1995, as amended, when upon such
48 date the provisions of section two of this act shall take effect.