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

8183--A

I N S E N A T E

August 29, 2016

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law and the penal law, in relation to the eligibility criteria for release on medical parole; and to repeal section 259-s of the executive law relating to release on medical parole for inmates suffering significant debilitating illnesses

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

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

1. have the power and duty of determining which inmates serving an indeterminate or determinate sentence of imprisonment may be released on parole, or on medical parole pursuant to section two hundred fifty-nine-r [or section two hundred fifty-nine-s] of this article, and when and under what conditions;

S 2. The section heading and paragraph (a) of subdivision 1 of section 259-r of the executive law, as amended by section 38-l of subpart A of part C of chapter 62 of the laws of 2011, are amended to read as follows:

Release on medical parole [for terminally ill inmates].

(a) The board shall have the power to release on medical parole any inmate serving an indeterminate or determinate sentence of imprisonment who, pursuant to subdivision two of this section, has been certified to be suffering from a terminal condition, disease or syndrome WHICH COULD LEAD TO A REASONABLE CONCLUSION THAT DEATH IS, OR MAY BE, IMMINENT and to be so debilitated or incapacitated as to create a reasonable probability that he or she is physically [or cognitively] incapable of presenting any danger to society, provided, however, that no inmate serving a sentence imposed upon a conviction for [murder in the first degree or an attempt or conspiracy to commit murder in the first degree shall be eligible for such release, and provided further that no inmate

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

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serving a sentence imposed upon a conviction for] any of the following offenses shall be eligible for such release [unless in the case of an indeterminate sentence he or she has served at least one-half of the minimum period of the sentence and in the case of a determinate sentence he or she has served at least one-half of the term of his or her determinate sentence]: MURDER IN THE FIRST DEGREE, murder in the second degree, manslaughter in the first degree, AGGRAVATED VEHICULAR HOMICIDE, AGGRAVATED MANSLAUGHTER IN THE FIRST DEGREE, AGGRAVATED MURDER, any offense defined in article one hundred thirty of the penal law or an attempt to commit any of these offenses. [Solely for the purpose of determining medical parole eligibility pursuant to this section, such one-half of the minimum period of the indeterminate sentence and one-half of the term of the determinate sentence shall not be credited with any time served under the jurisdiction of the department prior to the commencement of such sentence pursuant to the opening paragraph of subdivision one of section 70.30 of the penal law or subdivision two-a of section 70.30 of the penal law, except to the extent authorized by subdivision three of section 70.30 of the penal law.]

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

(a) The board shall have the power to release on medical parole any inmate serving an indeterminate [or determinate] sentence of imprisonment who, pursuant to subdivision two of this section, has been certified to be suffering from a terminal condition, disease or syndrome and to be so debilitated or incapacitated as to create a reasonable probability that he or she is physically [or cognitively] incapable of presenting any danger to society, provided, however, that no inmate serving a sentence imposed upon a conviction for [murder in the first degree or an attempt or conspiracy to commit murder in the first degree shall be eligible for such release, and provided further that no inmate serving a sentence imposed upon a conviction for] any of the following offenses shall be eligible for such release [unless in the case of an indeterminate sentence he or she has served at least one-half of the minimum period of the sentence and in the case of a determinate sentence he or she has served at least one-half of the term of his or her determinate sentence]: MURDER IN THE FIRST DEGREE, murder in the second degree, manslaughter in the first degree, AGGRAVATED VEHICULAR HOMICIDE, AGGRAVATED MANSLAUGHTER IN THE FIRST DEGREE, AGGRAVATED MURDER, any offense defined in article one hundred thirty of the penal law or an attempt to commit any of these offenses. [Solely for the purpose of determining medical parole eligibility pursuant to this section, such one-half of the minimum period of the indeterminate sentence and one-half of the term of the determinate sentence shall not be credited with any time served under the jurisdiction of the department prior to the commencement of such sentence pursuant to the opening paragraph of subdivision one of section 70.30 of the penal law or subdivision two-a of section 70.30 of the penal law, except to the extent authorized by subdivision three of section 70.30 of the penal law.]

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

(b) Such release shall be granted only after the board considers whether, in light of the inmate's medical condition, there is a reasonable probability that the inmate, if released, will live and remain at liberty without violating the law, and that such release is not incom-

patible with the welfare of society and will not so deprecate the seriousness of the crime as to undermine respect for the law, and shall be subject to the limits and conditions specified in subdivision four of this section. [Except as set forth in paragraph (a) of this subdivision, such] SUCH release may be granted at any time during the term of an inmate's sentence, notwithstanding any other provision of law.

S 5. Subdivisions 2 and 4 of section 259-r of the executive law, as amended by section 38-l of subpart A of part C of chapter 62 of the laws of 2011, are amended to read as follows:

2. (a) The commissioner, on the commissioner's own initiative or at the request of an inmate, [or an inmate's spouse, relative or attorney,] may, in the exercise of the commissioner's discretion, direct [that an investigation be undertaken to determine whether] a diagnosis [should] be made of an inmate who appears to be suffering from a terminal condition, disease or syndrome. Any such medical diagnosis shall be made by a physician licensed to practice medicine in this state pursuant to section sixty-five hundred twenty-four of the education law. Such physician shall either be employed by the department, shall render professional services at the request of the department, or shall be employed by a hospital or medical facility used by the department for the medical treatment of inmates. The diagnosis shall be reported to the commissioner and shall include but shall not be limited to a description of the terminal condition, disease or syndrome suffered by the inmate, a prognosis concerning the likelihood that the inmate will not recover from such terminal condition, disease or syndrome, a description of the inmate's physical [or cognitive] incapacity which shall include a prediction respecting the likely duration of the incapacity, and a statement by the physician of whether the inmate is so debilitated or incapacitated as to be severely restricted in his or her ability to self-ambulate [or to perform significant normal activities of daily living. This report also shall include a recommendation of the type and level of services and treatment the inmate would require if granted medical parole and a recommendation for the types of settings in which the services and treatment should be given] AND CARE FOR HIMSELF OR HERSELF.

(b) The commissioner, or the commissioner's designee, shall review the diagnosis and may certify that the inmate is suffering from such terminal condition, disease or syndrome and that the inmate is so debilitated or incapacitated as to create a reasonable probability that he or she is physically [or cognitively] incapable of presenting any danger to society. If the commissioner does not so certify then the inmate shall not be referred to the board for consideration for release on medical parole. If the commissioner does so certify, then the commissioner shall[, within seven working days of receipt of such diagnosis,] refer the inmate to the board for consideration for release on medical parole. However, no such referral of an inmate to the board shall be made unless the inmate has been examined by a physician and diagnosed as having a terminal condition, disease or syndrome as previously described herein at some time subsequent to such inmate's admission to a facility operated by the department [of correctional services].

(c) When the commissioner refers an inmate to the board, the commissioner shall provide an appropriate medical discharge plan FOR TERMINALLY ILL PATIENTS established by the department. [The department is authorized to request assistance from the department of health and from the county in which the inmate resided and committed his or her crime, which shall provide assistance with respect to the development and

implementation of a discharge plan, including potential placements of a releasee. The department and the department of health shall jointly develop standards for the medical discharge plan that are appropriately adapted to the criminal justice setting, based on standards established by the department of health for hospital medical discharge planning.] The board may REJECT ALL OR PART OF THE DISCHARGE PLAN FOR TERMINALLY ILL PATIENTS SUBMITTED BY THE DEPARTMENT, AND MAY postpone its decision pending [completion of an adequate] SUBMISSION OF A NEW discharge plan, or may deny release based on inadequacy of the discharge plan. THE DEPARTMENT SHALL DEVELOP STANDARDS FOR THE MEDICAL DISCHARGE PLAN THAT ARE APPROPRIATELY ADOPTED TO THE CRIMINAL JUSTICE SETTING, BASED ON STANDARDS ESTABLISHED BY THE DEPARTMENT OF HEALTH FOR HOSPITAL MEDICAL DISCHARGE PLANNING FOR TERMINALLY ILL PATIENTS.

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

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

(c) [Where appropriate, the] THE board shall require as a condition of release that medical parolees be supervised on intensive caseloads at reduced supervision ratios SIMILAR TO THE CASELOADS FOR PAROLEES RELEASED PURSUANT TO THE SHOCK INCARCERATION PROGRAM ESTABLISHED BY ARTICLE TWENTY-SIX-A OF THE CORRECTION LAW.

(d) The board shall require as a condition of release on medical parole that the releasee undergo periodic medical examinations and a medical examination at least one month prior to the expiration of the period of medical parole and, for the purposes of making a decision pursuant to paragraph (e) of this subdivision, that the releasee provide the board with a report, prepared by the treating physician, of the results of such examination. Such report shall specifically state whether or not the parolee continues to suffer from a terminal condition, disease, or syndrome, and to be so debilitated or incapacitated as to be severely restricted in his or her ability to self-ambulate [or to perform significant normal activities of daily living] AND TO CARE FOR HIMSELF OR HERSELF.

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

(f) If the updated medical report presented to the board states that a parolee released pursuant to this section is no longer so debilitated or incapacitated as to create a reasonable probability that he or she is physically [or cognitively] incapable of presenting any danger to society or if the releasee fails to submit the updated medical report then the board may not make a new grant of medical parole pursuant to paragraph (e) of this subdivision. Where the board has not granted medical parole pursuant to such paragraph (e) the board shall promptly conduct through one of its members, or cause to be conducted by a hearing officer designated by the board, a hearing to determine whether the releasee is suffering from a terminal condition, disease or syndrome and is so debilitated or incapacitated as to create a reasonable probability that he or she is physically [or cognitively] incapable of presenting any danger to society and does not present a danger to society. If the board makes such a determination then it may make a new grant of medical parole pursuant to the standards of paragraph (b) of subdivision one of this section. At the hearing, the releasee shall have the right to representation by counsel, including the right, if the releasee is financially unable to retain counsel, to have the appropriate court assign counsel in accordance with the county or city plan for representation placed in operation pursuant to article eighteen-B of the county law.

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

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

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

S 6. Section 259-s of the executive law is REPEALED.

S 7. Subparagraph (v) of paragraph (a) of subdivision 1 of section 70.40 of the penal law, as amended by section 127-c of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

(v) Notwithstanding any other subparagraph of this paragraph, a person may be paroled from the institution in which he or she is confined at any time on medical parole pursuant to section two hundred fifty-nine-r [or section two hundred fifty-nine-s] of the executive law or for deportation pursuant to paragraph (d) of subdivision two of section two hundred fifty-nine-i of the executive law or after the successful completion of a shock incarceration program pursuant to article twenty-six-A of the correction law.

S 8. This act shall take effect immediately; provided that:

(a) the amendments to subdivision 1 of section 259-c of the executive law, made by section one of this act, shall not affect the expiration of such subdivision and shall expire therewith;

(b) the amendments to paragraph (a) of subdivision 1 of section 259-r of the executive law, made by section two of this act, shall be subject to the expiration and reversion of such paragraph pursuant to subdivi-

sion d of section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section three of this act shall take effect; and

(c) the amendments to paragraph (a) of subdivision 1 of section 70.40 of the penal law, made by section seven of this act, shall not affect the expiration of such paragraph and shall expire therewith.