

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:

1 Section 1. Subdivision 1 of section 259-c of the executive law, as
2 amended by section 38-b of subpart A of part C of chapter 62 of the laws
3 of 2011, is amended to read as follows:
4 1. have the power and duty of determining which inmates serving an
5 indeterminate or determinate sentence of imprisonment may be released on
6 parole, or on medical parole pursuant to section two hundred
7 fifty-nine-r [or section two hundred fifty-nine-s] of this article, and
8 when and under what conditions;
9 S 2. The section heading and paragraph (a) of subdivision 1 of section
10 259-r of the executive law, as amended by section 38-l of subpart A of
11 part C of chapter 62 of the laws of 2011, are amended to read as
12 follows:
13 Release on medical parole [for terminally ill inmates].
14 (a) The board shall have the power to release on medical parole any
15 inmate serving an indeterminate or determinate sentence of imprisonment
16 who, pursuant to subdivision two of this section, has been certified to
17 be suffering from a terminal condition, disease or syndrome WHICH COULD
18 LEAD TO A REASONABLE CONCLUSION THAT DEATH IS, OR MAY BE, IMMINENT and
19 to be so debilitated or incapacitated as to create a reasonable proba-
20 bility that he or she is physically [or cognitively] incapable of
21 presenting any danger to society, provided, however, that no inmate
22 serving a sentence imposed upon a conviction for [murder in the first
23 degree or an attempt or conspiracy to commit murder in the first degree
24 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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1 serving a sentence imposed upon a conviction for] any of the following
2 offenses shall be eligible for such release [unless in the case of an
3 indeterminate sentence he or she has served at least one-half of the
4 minimum period of the sentence and in the case of a determinate sentence
5 he or she has served at least one-half of the term of his or her deter-
6 minate sentence]: MURDER IN THE FIRST DEGREE, murder in the second
7 degree, manslaughter in the first degree, AGGRAVATED VEHICULAR HOMICIDE,
8 AGGRAVATED MANSLAUGHTER IN THE FIRST DEGREE, AGGRAVATED MURDER, any
9 offense defined in article one hundred thirty of the penal law or an
10 attempt to commit any of these offenses. [Solely for the purpose of
11 determining medical parole eligibility pursuant to this section, such
12 one-half of the minimum period of the indeterminate sentence and one-
13 half of the term of the determinate sentence shall not be credited with
14 any time served under the jurisdiction of the department prior to the
15 commencement of such sentence pursuant to the opening paragraph of
16 subdivision one of section 70.30 of the penal law or subdivision two-a
17 of section 70.30 of the penal law, except to the extent authorized by
18 subdivision three of section 70.30 of the penal law.]

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

22 (a) The board shall have the power to release on medical parole any
23 inmate serving an indeterminate [or determinate] sentence of imprison-
24 ment who, pursuant to subdivision two of this section, has been certi-
25 fied to be suffering from a terminal condition, disease or syndrome and
26 to be so debilitated or incapacitated as to create a reasonable proba-
27 bility that he or she is physically [or cognitively] incapable of
28 presenting any danger to society, provided, however, that no inmate
29 serving a sentence imposed upon a conviction for [murder in the first
30 degree or an attempt or conspiracy to commit murder in the first degree
31 shall be eligible for such release, and provided further that no inmate
32 serving a sentence imposed upon a conviction for] any of the following
33 offenses shall be eligible for such release [unless in the case of an
34 indeterminate sentence he or she has served at least one-half of the
35 minimum period of the sentence and in the case of a determinate sentence
36 he or she has served at least one-half of the term of his or her deter-
37 minate sentence]: MURDER IN THE FIRST DEGREE, murder in the second
38 degree, manslaughter in the first degree, AGGRAVATED VEHICULAR HOMICIDE,
39 AGGRAVATED MANSLAUGHTER IN THE FIRST DEGREE, AGGRAVATED MURDER, any
40 offense defined in article one hundred thirty of the penal law or an
41 attempt to commit any of these offenses. [Solely for the purpose of
42 determining medical parole eligibility pursuant to this section, such
43 one-half of the minimum period of the indeterminate sentence and one-
44 half of the term of the determinate sentence shall not be credited with
45 any time served under the jurisdiction of the department prior to the
46 commencement of such sentence pursuant to the opening paragraph of
47 subdivision one of section 70.30 of the penal law or subdivision two-a
48 of section 70.30 of the penal law, except to the extent authorized by
49 subdivision three of section 70.30 of the penal law.]

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

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

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

7 S 5. Subdivisions 2 and 4 of section 259-r of the executive law, as
8 amended by section 38-1 of subpart A of part C of chapter 62 of the laws
9 of 2011, are amended to read as follows:

10 2. (a) The commissioner, on the commissioner's own initiative or at
11 the request of an inmate, [or an inmate's spouse, relative or attorney,]
12 may, in the exercise of the commissioner's discretion, direct [that an
13 investigation be undertaken to determine whether] a diagnosis [should]
14 be made of an inmate who appears to be suffering from a terminal condi-
15 tion, disease or syndrome. Any such medical diagnosis shall be made by a
16 physician licensed to practice medicine in this state pursuant to
17 section sixty-five hundred twenty-four of the education law. Such physi-
18 cian shall either be employed by the department, shall render profes-
19 sional services at the request of the department, or shall be employed
20 by a hospital or medical facility used by the department for the medical
21 treatment of inmates. The diagnosis shall be reported to the commission-
22 er and shall include but shall not be limited to a description of the
23 terminal condition, disease or syndrome suffered by the inmate, a prog-
24 nosis concerning the likelihood that the inmate will not recover from
25 such terminal condition, disease or syndrome, a description of the
26 inmate's physical [or cognitive] incapacity which shall include a
27 prediction respecting the likely duration of the incapacity, and a
28 statement by the physician of whether the inmate is so debilitated or
29 incapacitated as to be severely restricted in his or her ability to
30 self-ambulate [or to perform significant normal activities of daily
31 living. This report also shall include a recommendation of the type and
32 level of services and treatment the inmate would require if granted
33 medical parole and a recommendation for the types of settings in which
34 the services and treatment should be given] AND CARE FOR HIMSELF OR
35 HERSELF.

36 (b) The commissioner, or the commissioner's designee, shall review the
37 diagnosis and may certify that the inmate is suffering from such termi-
38 nal condition, disease or syndrome and that the inmate is so debilitated
39 or incapacitated as to create a reasonable probability that he or she is
40 physically [or cognitively] incapable of presenting any danger to socie-
41 ty. If the commissioner does not so certify then the inmate shall not be
42 referred to the board for consideration for release on medical parole.
43 If the commissioner does so certify, then the commissioner shall[, with-
44 in seven working days of receipt of such diagnosis,] refer the inmate to
45 the board for consideration for release on medical parole. However, no
46 such referral of an inmate to the board shall be made unless the inmate
47 has been examined by a physician and diagnosed as having a terminal
48 condition, disease or syndrome as previously described herein at some
49 time subsequent to such inmate's admission to a facility operated by the
50 department [of correctional services].

51 (c) When the commissioner refers an inmate to the board, the commis-
52 sioner shall provide an appropriate medical discharge plan FOR TERMINAL-
53 LY ILL PATIENTS established by the department. [The department is
54 authorized to request assistance from the department of health and from
55 the county in which the inmate resided and committed his or her crime,
56 which shall provide assistance with respect to the development and

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

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

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

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

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

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

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

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

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

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

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

39 S 7. Subparagraph (v) of paragraph (a) of subdivision 1 of section
40 70.40 of the penal law, as amended by section 127-c of subpart B of part
41 C of chapter 62 of the laws of 2011, is amended to read as follows:

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

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

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

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

1 sion d of section 74 of chapter 3 of the laws of 1995, as amended, when
2 upon such date the provisions of section three of this act shall take
3 effect; and
4 (c) the amendments to paragraph (a) of subdivision 1 of section 70.40
5 of the penal law, made by section seven of this act, shall not affect
6 the expiration of such paragraph and shall expire therewith.