STATE OF NEW YORK

2688

2019-2020 Regular Sessions

IN SENATE

January 28, 2019

Introduced by Sen. SEPULVEDA -- 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 medical parole

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. 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, 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~~] **a** 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 second degree, manslaughter in the first degree, 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

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

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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.

§ 2. 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~~] a 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 second degree, manslaughter in the first degree, 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.

§ 3. Paragraph (b) of subdivision 2 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) 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~~] be severely restricted in his or her ability to self-ambulate or to perform significant normal activities of daily living. 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~~] corrections and community supervision.

§ 4. Subdivision 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, is amended to read as follows:

4. (a) **The board shall, upon receipt of certification from the commissioner, independently determine whether the conditions under which the inmate would be released creates a reasonable probability that he or she is physically or cognitively incapable of presenting a danger to society. The board shall provide a determination of release within thirty days upon receipt of certification from the commissioner.**

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

[~~(b)~~] **(c)** 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)~~] **(d)** Where appropriate, the board shall require as a condition of release that medical parolees be supervised on intensive caseloads at reduced supervision ratios.

[~~(d)~~] **(e)** 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)~~] **(f)** 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.

[~~(e)~~] **(f)** Prior to the expiration of the period of medical parole the board shall review the medical examination report required by paragraph [~~(d)~~] **(e)** 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)~~] **(g)** 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~~] **a** 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)~~] **(f)** of this subdivision. Where the board has not granted medical parole pursuant to such paragraph [~~(e)~~] **(f)** 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 wheth-

er 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)~~] **(h)** The hearing and determination provided for by paragraph [~~(f)~~] **(g)** of this subdivision shall be concluded within the six 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)~~] **(i)** In addition to the procedures set forth in paragraph [~~(f)~~] **(g)** 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)~~] **(j)** 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.

§ 5. Paragraph (a) of subdivision 1 of section 259-s of the executive law, as amended by section 38-m 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 significant and permanent non-terminal condition, disease or syndrome that has rendered the inmate so physically or cognitively debilitated or incapacitated as to create a reasonable probability that he or she does not present [~~any~~] **a** 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 second degree, manslaughter in the first degree, 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.

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

(b) The commissioner, or the commissioner's designee, shall review the diagnosis and may certify that the inmate is suffering from such 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~~] **be severely restricted in his or her ability to self-ambulate or to perform significant normal activities of daily living**. 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 of parole shall be made unless the inmate has been examined by a physician and diagnosed as having a condition, disease or syndrome as previously described herein at some time subsequent to such inmate's admission to a facility operated by the department.

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

4. (a) **The board shall, upon receipt of certification from the commissioner, independently determine whether the conditions under which the inmate would be released creates a reasonable probability that he or she is physically or cognitively incapable of presenting a danger to society. The board shall provide a determination of release within thirty days upon receipt of certification from the commissioner.**

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

[~~(b)~~] **(c)** 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, including a residence with family or others, 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)~~] **(d)** Where appropriate, the board shall require as a condition of release that medical parolees be supervised on intensive caseloads at reduced supervision ratios.

[~~(d)~~] **(e)** 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)~~] (f) 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 significant and permanent non-terminal and debilitating 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.

[~~(e)~~] (f) Prior to the expiration of the period of medical parole the board shall review the medical examination report required by paragraph [~~(d)~~] (e) 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)~~] (g) 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~~] a 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)~~] (f) of this subdivision. Where the board has not granted medical parole pursuant to [~~such~~] paragraph [~~(e)~~] (f) of this subdivision 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 significant and permanent non-terminal and incapacitating 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)~~] (h) The hearing and determination provided for by paragraph [~~(f)~~] (g) of this subdivision shall be concluded within the six 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 of correctional services.

[~~(h)~~] (i) In addition to the procedures set forth in paragraph [~~(f)~~] (g) 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)~~] (j) 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.

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

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