

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:

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

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

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

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

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

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

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

37 (b) The commissioner, or the commissioner's designee, shall review the
38 diagnosis and may certify that the inmate is suffering from such termi-
39 nal condition, disease or syndrome and that the inmate is so debilitated
40 or incapacitated as to ~~[create a reasonable probability that he or she~~
41 ~~is physically or cognitively incapable of presenting any danger to soci-~~
42 ~~ety]~~ be severely restricted in his or her ability to self-ambulate or to
43 perform significant normal activities of daily living. If the commis-
44 sioner does not so certify then the inmate shall not be referred to the
45 board for consideration for release on medical parole. If the commis-
46 sioner does so certify, then the commissioner shall, within seven work-
47 ing days of receipt of such diagnosis, refer the inmate to the board for
48 consideration for release on medical parole. However, no such referral
49 of an inmate to the board shall be made unless the inmate has been exam-
50 ined by a physician and diagnosed as having a terminal condition,
51 disease or syndrome as previously described herein at some time subse-
52 quent to such inmate's admission to a facility operated by the depart-
53 ment of ~~[correctional services]~~ corrections and community supervision.

54 § 4. Subdivision 4 of section 259-r of the executive law, as amended
55 by section 38-l of subpart A of part C of chapter 62 of the laws of
56 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

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

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

6 (b) The commissioner, or the commissioner's designee, shall review the
7 diagnosis and may certify that the inmate is suffering from such condi-
8 tion, disease or syndrome and that the inmate is so debilitated or inca-
9 pacitated as to ~~[create a reasonable probability that he or she is phys-~~
10 ~~ically or cognitively incapable of presenting any danger to society]~~ be
11 severely restricted in his or her ability to self-ambulate or to perform
12 significant normal activities of daily living. If the commissioner does
13 not so certify then the inmate shall not be referred to the board for
14 consideration for release on medical parole. If the commissioner does
15 so certify, then the commissioner shall, within seven working days of
16 receipt of such diagnosis, refer the inmate to the board for consider-
17 ation for release on medical parole. However, no such referral of an
18 inmate to the board of parole shall be made unless the inmate has been
19 examined by a physician and diagnosed as having a condition, disease or
20 syndrome as previously described herein at some time subsequent to such
21 inmate's admission to a facility operated by the department.

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

25 4. (a) The board shall, upon receipt of certification from the commis-
26 sioner, independently determine whether the conditions under which the
27 inmate would be released creates a reasonable probability that he or she
28 is physically or cognitively incapable of presenting a danger to socie-
29 ty. The board shall provide a determination of release within thirty
30 days upon receipt of certification from the commissioner.

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

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

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

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

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

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

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

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

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

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

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

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