

STATE OF NEW YORK

4347--A

2021-2022 Regular Sessions

IN ASSEMBLY

February 1, 2021

Introduced by M. of A. WEPRIN, AUBRY, O'DONNELL, GOTTFRIED, WALKER -- read once and referred to the Committee on Correction -- recommitted to the Committee on Correction in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 14 of chapter 322 of the laws of
3 2021, is amended to read as follows:
4 (a) The board shall have the power to release on medical parole any
5 incarcerated individual serving an indeterminate or determinate sentence
6 of imprisonment who, pursuant to subdivision two of this section, has
7 been certified to be suffering from a terminal condition, disease or
8 syndrome and to be so debilitated or incapacitated as to create a
9 reasonable probability that he or she is physically or cognitively inca-
10 pable of presenting ~~any~~ a danger to society, provided, however, that
11 no incarcerated individual serving a sentence imposed upon a conviction
12 for murder in the first degree or an attempt or conspiracy to commit
13 murder in the first degree shall be eligible for such release, and
14 provided further that no incarcerated individual serving a sentence
15 imposed upon a conviction for any of the following offenses shall be
16 eligible for such release unless in the case of an indeterminate
17 sentence he or she has served at least one-half of the minimum period of
18 the sentence and in the case of a determinate sentence he or she has
19 served at least one-half of the term of his or her determinate sentence:
20 murder in the second degree, manslaughter in the first degree, any
21 offense defined in article one hundred thirty of the penal law or an
22 attempt to commit any of these offenses. Solely for the purpose of
23 determining medical parole eligibility pursuant to this section, such

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

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1 one-half of the minimum period of the indeterminate sentence and one-
2 half of the term of the determinate sentence shall not be credited with
3 any time served under the jurisdiction of the department prior to the
4 commencement of such sentence pursuant to the opening paragraph of
5 subdivision one of section 70.30 of the penal law or subdivision two-a
6 of section 70.30 of the penal law, except to the extent authorized by
7 subdivision three of section 70.30 of the penal law.

8 § 2. Paragraph (a) of subdivision 1 of section 259-r of the executive
9 law, as amended by section 14-a of chapter 322 of the laws of 2021, is
10 amended to read as follows:

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

38 § 3. Paragraph (b) of subdivision 2 of section 259-r of the executive
39 law, as amended by chapter 322 of the laws of 2021, is amended to read
40 as follows:

41 (b) The commissioner, or the commissioner's designee, shall review the
42 diagnosis and may certify that the incarcerated individual is suffering
43 from such terminal condition, disease or syndrome and that the incarcer-
44 ated individual is so debilitated or incapacitated as to ~~[create a~~
45 ~~reasonable probability that he or she is physically or cognitively inca-~~
46 ~~pable of presenting any danger to society]~~ be severely restricted in his
47 or her ability to self-ambulate or to perform significant normal activ-
48 ities of daily living. If the commissioner does not so certify then the
49 incarcerated individual shall not be referred to the board for consider-
50 ation for release on medical parole. If the commissioner does so certi-
51 fy, then the commissioner shall, within seven working days of receipt of
52 such diagnosis, refer the incarcerated individual to the board for
53 consideration for release on medical parole. However, no such referral
54 of an incarcerated individual to the board shall be made unless the
55 incarcerated individual has been examined by a physician and diagnosed
56 as having a terminal condition, disease or syndrome as previously

1 described herein at some time subsequent to such incarcerated individ-
2 ual's admission to a facility operated by the department of [~~correction-~~
3 ~~al services~~] corrections and community supervision.

4 § 4. Subdivision 4 of section 259-r of the executive law, as amended
5 by section 38-l of subpart A of part C of chapter 62 of the laws of
6 2011, paragraph (b) as amended by chapter 322 of the laws of 2021, is
7 amended to read as follows:

8 4. (a) The board shall, upon receipt of certification from the commis-
9 sioner, independently determine whether the conditions under which the
10 incarcerated individual would be released creates a reasonable probabili-
11 ty that he or she is physically or cognitively incapable of presenting
12 a danger to society. The board shall provide a determination of release
13 within thirty days upon receipt of certification from the commissioner.

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

16 [~~(b)~~] (c) 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 law,
25 when an incarcerated individual who qualifies for release under this
26 section is cognitively incapable of signing the requisite documentation
27 to effectuate the medical discharge plan and, after a diligent search no
28 person has been identified who could otherwise be appointed as the
29 incarcerated individual's guardian by a court of competent jurisdiction,
30 then, solely for the purpose of implementing the medical discharge plan,
31 the facility health services director at the facility where the incar-
32 cerated individual is currently incarcerated shall be lawfully empowered
33 to act as the incarcerated individual's guardian for the purpose of
34 effectuating the medical discharge.

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

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

49 [~~(e)~~] (f) Prior to the expiration of the period of medical parole the
50 board shall review the medical examination report required by paragraph
51 [~~(d)~~] (e) of this subdivision and may again grant medical parole pursu-
52 ant to this section; provided, however, that the provisions of paragraph
53 (c) of subdivision one and subdivision two of this section shall not
54 apply.

55 [~~(f)~~] (g) If the updated medical report presented to the board states
56 that a parolee released pursuant to this section is no longer so debili-

1 tated or incapacitated as to create a reasonable probability that he or
2 she is physically or cognitively incapable of presenting ~~[any]~~ a danger
3 to society or if the releasee fails to submit the updated medical report
4 then the board may not make a new grant of medical parole pursuant to
5 paragraph ~~(e)~~ (f) of this subdivision. Where the board has not granted
6 medical parole pursuant to such paragraph ~~(e)~~ (f) the board shall
7 promptly conduct through one of its members, or cause to be conducted by
8 a hearing officer designated by the board, a hearing to determine wheth-
9 er the releasee is suffering from a terminal condition, disease or
10 syndrome and is so debilitated or incapacitated as to create a reason-
11 able probability that he or she is physically or cognitively incapable
12 of presenting ~~[any danger to society and does not present]~~ a danger to
13 society. If the board makes such a determination then it may make a new
14 grant of medical parole pursuant to the standards of paragraph (b) of
15 subdivision one of this section. At the hearing, the releasee shall have
16 the right to representation by counsel, including the right, if the
17 releasee is financially unable to retain counsel, to have the appropri-
18 ate court assign counsel in accordance with the county or city plan for
19 representation placed in operation pursuant to article eighteen-B of the
20 county law.

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

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

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

36 § 5. Paragraph (a) of subdivision 1 of section 259-s of the executive
37 law, as amended by chapter 322 of the laws of 2021, is amended to read
38 as follows:

39 (a) The board shall have the power to release on medical parole any
40 incarcerated individual serving an indeterminate or determinate sentence
41 of imprisonment who, pursuant to subdivision two of this section, has
42 been certified to be suffering from a significant and permanent non-ter-
43 minal condition, disease or syndrome that has rendered the incarcerated
44 individual so physically or cognitively debilitated or incapacitated as
45 to create a reasonable probability that he or she does not present ~~[any]~~
46 a danger to society, provided, however, that no incarcerated individual
47 serving a sentence imposed upon a conviction for murder in the first
48 degree or an attempt or conspiracy to commit murder in the first degree
49 shall be eligible for such release, and provided further that no incar-
50 cerated individual serving a sentence imposed upon a conviction for any
51 of the following offenses shall be eligible for such release unless in
52 the case of an indeterminate sentence he or she has served at least
53 one-half of the minimum period of the sentence and in the case of a
54 determinate sentence he or she has served at least one-half of the term
55 of his or her determinate sentence: murder in the second degree,
56 manslaughter in the first degree, any offense defined in article one

1 hundred thirty of the penal law or an attempt to commit any of these
2 offenses. Solely for the purpose of determining medical parole eligibil-
3 ity pursuant to this section, such one-half of the minimum period of the
4 indeterminate sentence and one-half of the term of the determinate
5 sentence shall not be credited with any time served under the jurisdic-
6 tion of the department prior to the commencement of such sentence pursu-
7 ant to the opening paragraph of subdivision one of section 70.30 of the
8 penal law or subdivision two-a of section 70.30 of the penal law, except
9 to the extent authorized by subdivision three of section 70.30 of the
10 penal law.

11 § 6. Paragraph (b) of subdivision 2 of section 259-s of the executive
12 law, as amended by chapter 322 of the laws of 2021, is amended to read
13 as follows:

14 (b) The commissioner, or the commissioner's designee, shall review the
15 diagnosis and may certify that the incarcerated individual is suffering
16 from such condition, disease or syndrome and that the incarcerated indi-
17 vidual is so debilitated or incapacitated as to ~~[create a reasonable~~
18 ~~probability that he or she is physically or cognitively incapable of~~
19 ~~presenting any danger to society]~~ be severely restricted in his or her
20 ability to self-ambulate or to perform significant normal activities of
21 daily living. If the commissioner does not so certify then the incarcer-
22 ated individual shall not be referred to the board for consideration for
23 release on medical parole. If the commissioner does so certify, then the
24 commissioner shall, within seven working days of receipt of such diagno-
25 sis, refer the incarcerated individual to the board for consideration
26 for release on medical parole. However, no such referral of an incar-
27 cerated individual to the board of parole shall be made unless the
28 incarcerated individual has been examined by a physician and diagnosed
29 as having a condition, disease or syndrome as previously described here-
30 in at some time subsequent to such incarcerated individual's admission
31 to a facility operated by the department.

32 § 7. Subdivision 4 of section 259-s of the executive law, as amended
33 by chapter 322 of the laws of 2021, is amended to read as follows:

34 4. (a) The board shall, upon receipt of certification from the commis-
35 sioner, independently determine whether the conditions under which the
36 incarcerated individual would be released creates a reasonable probabili-
37 ty that he or she is physically or cognitively incapable of presenting
38 a danger to society. The board shall provide a determination of release
39 within thirty days upon receipt of certification from the commissioner.

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

42 ~~(b)~~ (c) The board shall require as a condition of release on medical
43 parole that the releasee agree to remain under the care of a physician
44 while on medical parole and in a hospital established pursuant to arti-
45 cle twenty-eight of the public health law, a hospice established pursu-
46 ant to article forty of the public health law or any other placement,
47 including a residence with family or others, that can provide appropri-
48 ate medical care as specified in the medical discharge plan required by
49 subdivision two of this section. The medical discharge plan shall state
50 that the availability of the placement has been confirmed, and by whom.
51 Notwithstanding any other provision of law, when an incarcerated indi-
52 vidual who qualifies for release under this section is cognitively inca-
53 pable of signing the requisite documentation to effectuate the medical
54 discharge plan and, after a diligent search no person has been identi-
55 fied who could otherwise be appointed as the incarcerated individual's
56 guardian by a court of competent jurisdiction, then, solely for the

1 purpose of implementing the medical discharge plan, the facility health
2 services director at the facility where the incarcerated individual is
3 currently incarcerated shall be lawfully empowered to act as the incar-
4 cerated individual's guardian for the purpose of effectuating the
5 medical discharge.

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

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

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

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

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

55 ~~[(h)]~~ (i) In addition to the procedures set forth in paragraph ~~[(f)]~~
56 (g) of this subdivision, medical parole may be revoked at any time upon

1 any of the grounds specified in paragraph (a) of subdivision three of
2 section two hundred fifty-nine-i of this article, and in accordance with
3 the procedures specified in subdivision three of section two hundred
4 fifty-nine-i of this article.

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

9 § 8. This act shall take effect immediately; provided, however, that
10 the amendments to paragraph (a) of subdivision 1 of section 259-r of the
11 executive law made by section one of this act shall be subject to the
12 expiration and reversion of such paragraph pursuant to subdivision d of
13 section 74 of chapter 3 of the laws of 1995, as amended, when upon such
14 date the provisions of section two of this act shall take effect.