

STATE OF NEW YORK

7190

2023-2024 Regular Sessions

IN ASSEMBLY

May 12, 2023

Introduced by M. of A. DILAN -- read once and referred to the Committee on 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 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
24 one-half of the minimum period of the indeterminate sentence and one-
25 half of the term of the determinate sentence shall not be credited with
26 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 14-a of chapter 322 of the laws of 2021, is
7 amended to read as follows:

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

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

38 (b) The commissioner, or the commissioner's designee, shall review the
39 diagnosis and may certify that the incarcerated individual is suffering
40 from such terminal condition, disease or syndrome and that the incarcer-
41 ated individual is so debilitated or incapacitated as to ~~[create a~~
42 ~~reasonable probability that he or she is physically or cognitively inca-~~
43 ~~pable of presenting any danger to society]~~ be severely restricted in his
44 or her ability to self-ambulate or to perform significant normal activ-
45 ities of daily living. If the commissioner does not so certify then the
46 incarcerated individual shall not be referred to the board for consider-
47 ation for release on medical parole. If the commissioner does so certi-
48 fy, then the commissioner shall, within seven working days of receipt of
49 such diagnosis, refer the incarcerated individual to the board for
50 consideration for release on medical parole. However, no such referral
51 of an incarcerated individual to the board shall be made unless the
52 incarcerated individual has been examined by a physician and diagnosed
53 as having a terminal condition, disease or syndrome as previously
54 described herein at some time subsequent to such incarcerated individ-
55 ual's admission to a facility operated by the department of ~~[correction-~~
56 ~~al 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, paragraph (b) as amended by chapter 322 of the laws of 2021, 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 incarcerated individual 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 incarcerated individual 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 incarcerated individual'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 incarcerated individual is currently incarcerated shall be lawfully empowered to act as the incarcerated individual'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

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

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

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

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

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

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

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

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

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

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

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

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

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

cerated individual's guardian for the purpose of effectuating the medical discharge.

~~[(e)]~~ (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

1 the procedures specified in subdivision three of section two hundred
2 fifty-nine-i of this article.

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

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