

STATE OF NEW YORK

6283

2023-2024 Regular Sessions

IN SENATE

April 11, 2023

Introduced by Sens. SEPULVEDA, MAY, PARKER -- 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 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

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

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1 any time served under the jurisdiction of the department prior to the
2 commencement of such sentence pursuant to the opening paragraph of
3 subdivision one of section 70.30 of the penal law or subdivision two-a
4 of section 70.30 of the penal law, except to the extent authorized by
5 subdivision three of section 70.30 of the penal law.

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

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

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

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

1 ual's admission to a facility operated by the department of [~~correction-~~
2 ~~al-services~~] corrections and community supervision.

3 § 4. Subdivision 4 of section 259-r of the executive law, as amended
4 by section 38-1 of subpart A of part C of chapter 62 of the laws of
5 2011, paragraph (b) as amended by chapter 322 of the laws of 2021, is
6 amended to read as follows:

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

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

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

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

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

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

54 [~~(f)~~] (g) If the updated medical report presented to the board states
55 that a parolee released pursuant to this section is no longer so debili-
56 tated or incapacitated as to create a reasonable probability that he or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 section two hundred fifty-nine-i of this article, and in accordance with
2 the procedures specified in subdivision three of section two hundred
3 fifty-nine-i of this article.

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

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