

STATE OF NEW YORK

9347

IN ASSEMBLY

March 6, 2024

Introduced by M. of A. DILAN -- read once and referred to the Committee on Correction

AN ACT to amend the executive law, the penal law and the social services law, in relation to release on medical parole for certain incarcerated individuals

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

Section 1. The executive law is amended by adding a new section 259-u to read as follows:

§ 259-u. Release on medical parole for certain incarcerated individuals. 1. (a) The board shall have the power to release on medical parole any incarcerated individual serving an indeterminate or determinate sentence of imprisonment who, pursuant to subdivision two of this section, has been certified to require the level of care typically provided in a nursing home setting or those who, because of their physical or cognitive condition, are limited in their ability to perform basic life activities as to create a reasonable probability that such incarcerated individual does not present any danger to society, provided, however, that no incarcerated individual 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 incarcerated individual 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 they have served at least one-half of the minimum period of the sentence and in the case of a determinate sentence they have served at least one-half of the term of their 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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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 (b) Such release shall be granted only after the board considers
6 whether, in light of the incarcerated individual's medical condition,
7 there is a reasonable probability that the incarcerated individual, if
8 released, will live and remain at liberty without violating the law, and
9 that such release is not incompatible with the welfare of society and
10 will not so deprecate the seriousness of the crime as to undermine
11 respect for the law, and shall be subject to the limits and conditions
12 specified in subdivision four of this section. In making this determi-
13 nation, the board shall consider: (i) the nature and seriousness of the
14 incarcerated individual's crime; (ii) the incarcerated individual's
15 prior criminal record; (iii) the incarcerated individual's disciplinary,
16 behavioral and rehabilitative record during the term of their carcera-
17 tion; (iv) the amount of time the incarcerated individual must serve
18 before becoming eligible for release pursuant to section two hundred
19 fifty-nine-i of this article; (v) the current age of the incarcerated
20 individual and their age at the time of the crime; (vi) the recommenda-
21 tions of the sentencing court, the district attorney and the victim or
22 the victim's representative; (vii) the nature of the incarcerated indi-
23 vidual's medical condition, disease or syndrome and the extent of
24 medical treatment or care that the incarcerated individual will require
25 as a result of that condition, disease or syndrome; and (viii) any other
26 relevant factor. Except as set forth in paragraph (a) of this subdivi-
27 sion, such release may be granted at any time during the term of an
28 incarcerated individual's sentence, notwithstanding any other provision
29 of law.

30 (c) The board shall afford notice to the sentencing court, the
31 district attorney, the attorney for the incarcerated individual and,
32 where necessary pursuant to subdivision two of section two hundred
33 fifty-nine-i of this article, the crime victim, that the incarcerated
34 individual is being considered for release pursuant to this section and
35 the parties receiving notice shall have thirty days to comment on the
36 release of the incarcerated individual. Release on medical parole shall
37 not be granted until the expiration of the comment period provided for
38 in this paragraph.

39 2. (a) The commissioner, on the commissioner's own initiative or at
40 the request of an incarcerated individual, or an incarcerated individ-
41 ual's spouse, relative or attorney, may, in the exercise of the commis-
42 sioner's discretion, direct that an investigation be undertaken to
43 determine whether a diagnosis should be made of an incarcerated individ-
44 ual who appears to require the level of care typically provided in a
45 nursing home setting or, because of their physical or cognitive condi-
46 tion, are limited in their ability to perform basic life activities. Any
47 such medical diagnosis shall be made by a physician licensed to practice
48 medicine in this state pursuant to section sixty-five hundred twenty-
49 four of the education law. Such physician shall either be employed by
50 the department, shall render professional services at the request of the
51 department, or shall be employed by a hospital or medical facility used
52 by the department for the medical treatment of incarcerated individuals.
53 The diagnosis shall be reported to the commissioner and shall include
54 but shall not be limited to a description of the condition, disease or
55 syndrome suffered by the incarcerated individual, a prognosis concerning
56 the likelihood that the incarcerated individual will not recover from

1 such condition, disease or syndrome, a description of the incarcerated
2 individual's physical or cognitive incapacity which shall include a
3 prediction respecting the likely duration of the incapacity, and a
4 statement by the physician of whether the incarcerated individual is so
5 debilitated or incapacitated as to be severely restricted in their abil-
6 ity to self-ambulate or to perform significant normal activities of
7 daily living. This report also shall include a recommendation of the
8 type and level of services and treatment the incarcerated individual
9 would require if granted medical parole and a recommendation for the
10 types of settings in which the services and treatment should be given.

11 (b) The commissioner, or the commissioner's designee, shall review the
12 diagnosis and may certify that the incarcerated individual requires the
13 level of care typically provided in a nursing home setting or those who,
14 because of their physical or cognitive condition, are limited in their
15 ability to perform basic life activities, and as a result of such condi-
16 tion creates a reasonable probability that such incarcerated individual
17 is physically or cognitively incapable of presenting any danger to soci-
18 ety. If the commissioner does not so certify then the incarcerated indi-
19 vidual shall not be referred to the board for consideration for release
20 on medical parole. If the commissioner does so certify, then the commis-
21 sioner shall, within seven working days of receipt of such diagnosis,
22 refer the incarcerated individual to the board for consideration for
23 release on medical parole. However, no such referral of an incarcerated
24 individual to the board of parole shall be made unless the incarcerated
25 individual has been examined by a physician and diagnosed as having a
26 condition, disease or syndrome as previously described herein at some
27 time subsequent to such incarcerated individual's admission to a facili-
28 ty operated by the department.

29 (c) When the commissioner refers an incarcerated individual to the
30 board, the commissioner shall provide an appropriate medical discharge
31 plan established by the department. The department is authorized to
32 request assistance from the department of health and from the county in
33 which the incarcerated individual resided and committed their crime,
34 which shall provide assistance with respect to the development and
35 implementation of a discharge plan, including potential placements of a
36 releasee. The department and the department of health shall jointly
37 develop standards for the medical discharge plan that are appropriately
38 adapted to the criminal justice setting, based on standards established
39 by the department of health for hospital medical discharge planning. The
40 board may postpone its decision pending completion of an adequate
41 discharge plan, or may deny release based on inadequacy of the discharge
42 plan.

43 3. Any certification by the commissioner or the commissioner's desig-
44 nee pursuant to this section shall be deemed a judicial function and
45 shall not be reviewable if done in accordance with law.

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

48 (b) The board shall require as a condition of release on medical
49 parole that the releasee agree to remain under the care of a physician
50 while on medical parole and in a hospital established pursuant to arti-
51 cle twenty-eight of the public health law, a hospice established pursu-
52 ant to article forty of the public health law or any other placement,
53 including a residence with family or others, that can provide appropri-
54 ate medical care as specified in the medical discharge plan required by
55 subdivision two of this section. The medical discharge plan shall state
56 that the availability of the placement has been confirmed, and by whom.

1 Notwithstanding any other provision of law, when an incarcerated indi-
2 vidual who qualifies for release under this section is cognitively inca-
3 pable of signing the requisite documentation to effectuate the medical
4 discharge plan and, after a diligent search no person has been identi-
5 fied who could otherwise be appointed as the incarcerated individual's
6 guardian by a court of competent jurisdiction, then, solely for the
7 purpose of implementing the medical discharge plan, the facility health
8 services director at the facility where the incarcerated individual is
9 currently incarcerated shall be lawfully empowered to act as the incar-
10 cerated individual's guardian for the purpose of effectuating the
11 medical discharge.

12 (c) Where appropriate, the board shall require as a condition of
13 release that medical parolees be supervised on intensive caseloads at
14 reduced supervision ratios.

15 (d) The board shall require as a condition of release on medical
16 parole that the releasee undergo periodic medical examinations and a
17 medical examination at least one month prior to the expiration of the
18 period of medical parole and, for the purposes of making a decision
19 pursuant to paragraph (e) of this subdivision, that the releasee provide
20 the board with a report, prepared by the treating physician, of the
21 results of such examination. Such report shall specifically state wheth-
22 er or not the parolee continues to require the level of care typically
23 provided in a nursing home setting or those who, because of their phys-
24 ical or cognitive condition, are limited in their ability to perform
25 basic life activities.

26 (e) Prior to the expiration of the period of medical parole the board
27 shall review the medical examination report required by paragraph (d) of
28 this subdivision and may again grant medical parole pursuant to this
29 section; provided, however, that the provisions of paragraph (c) of
30 subdivision one and subdivision two of this section shall not apply.

31 (f) If the updated medical report presented to the board states that a
32 parolee released pursuant to this section is no longer so debilitated or
33 incapacitated as to create a reasonable probability that they are phys-
34 ically or cognitively incapable of presenting any danger to society or
35 if the releasee fails to submit the updated medical report then the
36 board may not make a new grant of medical parole pursuant to paragraph
37 (e) of this subdivision. Where the board has not granted medical parole
38 pursuant to such paragraph (e) the board shall promptly conduct through
39 one of its members, or cause to be conducted by a hearing officer desig-
40 nated by the board, a hearing to determine whether the releasee requires
41 the level of care typically provided in a nursing home setting or,
42 because of their physical or cognitive condition, are limited in their
43 ability to perform basic life activities as to create a reasonable prob-
44 ability that they are physically or cognitively incapable of presenting
45 any danger to society and does not present a danger to society. If the
46 board makes such a determination then it may make a new grant of medical
47 parole pursuant to the standards of paragraph (b) of subdivision one of
48 this section. At the hearing, the releasee shall have the right to
49 representation by counsel, including the right, if the releasee is
50 financially unable to retain counsel, to have the appropriate court
51 assign counsel in accordance with the county or city plan for represen-
52 tation placed in operation pursuant to article eighteen-B of the county
53 law.

54 (g) The hearing and determination provided for by paragraph (f) of
55 this subdivision shall be concluded within the six month period of
56 medical parole. If the board does not renew the grant of medical parole,

1 it shall order that the releasee be returned immediately to the custody
2 of the department of correctional services.

3 (h) In addition to the procedures set forth in paragraph (f) of this
4 subdivision, medical parole may be revoked at any time upon any of the
5 grounds specified in paragraph (a) of subdivision three of section two
6 hundred fifty-nine-i of this article, and in accordance with the proce-
7 dures specified in subdivision three of section two hundred fifty-nine-i
8 of this article.

9 (i) A releasee who is on medical parole and who becomes eligible for
10 parole pursuant to the provisions of subdivision two of section two
11 hundred fifty-nine-i of this article shall be eligible for parole
12 consideration pursuant to such subdivision.

13 5. A denial of release on medical parole or expiration of medical
14 parole in accordance with the provisions of paragraph (f) of subdivision
15 four of this section shall not preclude the incarcerated individual from
16 reapplying for medical parole or otherwise affect an incarcerated indi-
17 vidual's eligibility for any other form of release provided for by law.

18 6. To the extent that any provision of this section requires disclo-
19 sure of medical information for the purpose of processing an application
20 or making a decision, regarding release on medical parole or renewal of
21 medical parole, or for the purpose of appropriately supervising a person
22 released on medical parole, and that such disclosure would otherwise be
23 prohibited by article twenty-seven-F of the public health law, the
24 provisions of this section shall be controlling.

25 7. The commissioner and the chair of the board shall be authorized to
26 promulgate rules and regulations for their respective agencies to imple-
27 ment the provisions of this section.

28 8. Any decision made by the board pursuant to this section may be
29 appealed pursuant to subdivision four of section two hundred
30 fifty-nine-i of this article.

31 9. The chair of the board shall report annually to the governor, the
32 temporary president of the senate and the speaker of the assembly, the
33 chairpersons of the assembly and senate codes committees, the chair-
34 person of the senate crime and corrections committee, and the chair-
35 person of the assembly corrections committee the number of incarcerated
36 individuals who have applied for medical parole under this section; the
37 number who have been granted medical parole; the nature of the illness
38 of the applicants, the counties to which they have been released and the
39 nature of the placement pursuant to the medical discharge plan; the
40 categories of reasons for denial for those who have been denied; the
41 number of releasees who have been granted an additional period or peri-
42 ods of medical parole and the number of such grants; the number of
43 releasees on medical parole who have been returned to imprisonment in
44 the custody of the department and the reasons for return.

45 § 2. Subdivision 1 of section 259-c of the executive law, as amended
46 by chapter 322 of the laws of 2021, is amended to read as follows:

47 1. have the power and duty of determining which incarcerated individ-
48 uals serving an indeterminate or determinate sentence of imprisonment
49 may be released on parole, or on medical parole pursuant to section two
50 hundred fifty-nine-r ~~or~~, section two hundred fifty-nine-s or section
51 two hundred fifty-nine-u of this article, and when and under what condi-
52 tions;

53 § 3. Subparagraph (v) of paragraph (a) of subdivision 1 of section
54 70.40 of the penal law, as amended by section 127-c of subpart B of part
55 C of chapter 62 of the laws of 2011, is amended to read as follows:

(v) Notwithstanding any other subparagraph of this paragraph, a person may be paroled from the institution in which ~~[he or she]~~ such person is confined at any time on medical parole pursuant to section two hundred fifty-nine-r ~~[or]~~, section two hundred fifty-nine-s or section two hundred fifty-nine-u of the executive law or for deportation pursuant to paragraph (d) of subdivision two of section two hundred fifty-nine-i of the executive law or after the successful completion of a shock incarceration program pursuant to article twenty-six-A of the correction law.

§ 4. Subparagraph 4 of paragraph (g) of subdivision 5 of section 62 of the social services law, as amended by section 151 of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

(4) Any inconsistent provision of this chapter or other law notwithstanding, when a person is released on medical parole pursuant to section two hundred fifty-nine-r ~~[or]~~, section two hundred fifty-nine-s or section two hundred fifty-nine-u of the executive law and is in need of public assistance, including medical assistance, the social services district in which such person was convicted and from which ~~[he or she]~~ such person was committed to the custody of the department of corrections and community supervision shall be responsible for the administrative costs of the initial and any subsequent eligibility determination and the costs of any public assistance, including medical assistance, following such persons release on medical parole for so long as such person is eligible therefor.

§ 5. This act shall take effect immediately; provided, however, that the amendments to subdivision 1 of section 259-c of the executive law made by section two of this act and the amendments to paragraph (a) of subdivision 1 of section 70.40 of the penal law made by section three of this act shall not affect the expiration of such subdivision and such paragraph and shall be deemed to expire therewith.