

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 2370
STATE OF NEW JERSEY
219th LEGISLATURE

DATED: JULY 24, 2020

SUMMARY

Synopsis: Establishes compassionate release program for certain inmates; repeals law that establishes medical parole.

Type of Impact: Annual expenditure decrease to the State General Fund.

Agencies Affected: Department of Corrections; State Parole Board; The Judiciary; Office of the Public Defender.

Office of Legislative Services Estimate

Fiscal Impact	Annual
State Expenditure Decrease	Indeterminate

- The Office of Legislative Services (OLS) concludes that the enactment of this bill will result in nominal cost savings to the State. The OLS lacks sufficient information to quantify the fiscal impact as there is no way to accurately project the number of inmates likely to suffer from a grave medical condition, terminal illness, or permanent physical incapacity so as to qualify for compassionate release in any given year. Overall, the savings, if any, are likely to be marginal due to a small number of inmates qualifying for compassionate release.
- For every inmate qualifying for compassionate release with a prognosis of six to twelve months to live or a permanent physical incapacity, the Department of Corrections (DOC) would realize a modest reduction in expenditures. DOC data indicate that the marginal cost per day to provide inmates with food, wages, and clothing totals approximately \$8.60 per inmate. By releasing inmates six to twelve months prior to the end of their sentence, the bill would decrease department expenditures by approximately \$1,548 to \$3,096 per inmate. According to the DOC, on average there are forty deaths per year in State prisons. However, the DOC is unable to determine whether the deaths are due to any terminal condition. The DOC notes that very few patients are ever released before their death due to diseases such as terminal cancer, hepatic failure, end stage cardiac disease, end stage lung disease, AIDS, etc.
- This bill repeals the medical parole law and therefore the State Parole Board (SPB) is likely to see a nominal reduction in annual expenditures due to a reduction in the number of inmates on parole. Under current law, a decision concerning the medical parole of an inmate is conducted by the parole board. Under the provisions of this bill, compassionate release will require the

courts to decide on the release of qualified inmates. However, the SPB will be required to create a release plan for inmates granted compassionate release.

- The Office of Public Defender would have to represent additional low-income defendants for the purposes of filing a petition for compassionate release and hence likely to incur an increase in caseload and expenditures. The State Judiciary may also incur an indeterminate nominal increase in operating expenditures due to increased caseload.

BILL DESCRIPTION

This bill establishes compassionate release for certain inmates and repeals the current medical parole law.

Under the bill, a court may release an inmate who qualifies for compassionate release at any time if the inmate is found to be suffering from: 1) a grave medical condition; 2) a terminal condition, disease or syndrome; or 3) a permanent physical incapacity, as defined in the bill.

The bill provides that the DOC is to establish a process for an inmate to obtain a diagnosis from two licensed physicians to determine whether he or she is eligible for compassionate release.

If the inmate is diagnosed with a grave medical condition, under the bill, the inmate's attorney or public defender may initiate the process of petitioning for compassionate release. If the inmate is diagnosed with a terminal condition, disease or syndrome, or permanent physical incapacity, the DOC is to provide the inmate and the inmate's attorney or public defender with a certificate of eligibility for compassionate release. The inmate may petition the Superior Court for compassionate release based on the certificate of eligibility.

This bill requires a hearing to be held on an expedited basis. In addition, the county prosecutor or Attorney General is required to provide a copy of the petition to any victim or family member who is entitled to notice. The court is to provide a copy of its written decision to the inmate, the county prosecutor or Attorney General, and any victim or member of a victim's family who is to be provided with notice.

If an inmate is granted compassionate release under the bill, the court is required to ensure that the parole board has created a release plan.

The bill provides that the Commissioner of Corrections is to ensure that the inmate is provided assistance in completing an application for Medicaid benefits. The State Parole Board is to initiate proceedings to return the inmate to confinement if he or she is no longer debilitated by a terminal condition, disease or syndrome, or permanent physical incapacity and, therefore, capable of committing a crime.

Finally, this bill repeals the current medical parole law. Under current law, an inmate suffering from a terminal condition or permanent physical incapacity may be eligible for medical parole. Under current law, a decision concerning the medical parole of an inmate is conducted by the parole board.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The OLS has not received a formal fiscal note on this bill. However, upon request, the DOC has indicated to the OLS that the bill may not have a significant fiscal impact as "very few

patients are ever released before their death from their disease process (i.e., terminal cancer, hepatic failure, end stage cardiac disease, end stage lung disease, AIDS, etc.).” Furthermore, the DOC points out that not all patients referred to medical parole are approved due to the requirement of terminal diagnosis of less than six months to live and a permanent physical disability demonstrated by total need for skilled nursing care. These conditions have to be met for the consideration of compassionate release as well. According to the DOC, on average there are forty deaths per year in State prisons. However, the DOC is unable to determine whether the deaths are due to any terminal condition.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that releasing inmates early from State prisons under a compassionate release program could marginally reduce annual DOC expenditures. Inmates found to be suffering from: 1) a grave medical condition; 2) a terminal condition, disease or syndrome; or 3) a permanent physical incapacity would qualify for compassionate release. The OLS is unable to quantify the exact fiscal impact due to insufficient information but concludes that this bill may result in nominal cost savings to the State.

The DOC previously indicated to the OLS that the average annual cost to house an inmate in a State prison facility totaled \$50,590 in FY 2019. But this amount would not accrue as State cost savings for each individual released unless the prison population declined by a number large enough for the DOC to lower bed space capacity, thereby reducing fixed costs. The department informed the OLS that if a single inmate had been diverted from State prison in FY 2019 without decreasing the number of bed spaces, the department would not have incurred marginal costs for food, wages, and clothing of \$8.74 per day, or \$3,190 for the fiscal year. According to the DOC, on average there are 40 deaths per year in State facilities. However, the DOC is unable to determine whether the deaths were due to any terminal condition. The DOC notes that very few patients are ever released before their death from their disease process (i.e., terminal cancer, hepatic failure, end stage cardiac disease, end stage lung disease, AIDS, etc.).

This bill repeals the medical parole law and therefore, the SPB is likely to see a nominal reduction in expenditures due to a reduction in the number of inmates on parole. Under current law, a decision concerning the medical parole of an inmate is conducted by the parole board. Under the provisions of this bill, compassionate release will require the courts to decide on the release of qualified inmates. The Judiciary and the Office of the Public Defender are likely to see a marginally increased caseload.

Section: *Judiciary*
Analyst: *Anuja Pande Joshi*
 Assistant Research Analyst
Approved: *Frank W. Haines III*
 Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).