

[Passed Both Houses]

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ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 22

STATE OF NEW JERSEY

ADOPTED MARCH 3, 1997

Sponsored by Assemblyman **HOLZAPFEL**, Assemblywoman
VANDERVALK, Assemblymen **Geist**, **Kramer**, **DeSopo**,
Senators **Ciesla**, **Matheussen** and **McGreevey**

1 AN ACT concerning medical parole and supplementing and amending
2 P.L.1979, c.441.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. (New section) a. (1) For the purpose of this section, "terminal
8 condition, disease or syndrome" means a prognosis by the licensed
9 physicians designated by the Commissioner of Corrections pursuant to
10 subsection b. of this section that an inmate has six months or less to
11 live.

12 (2) Except as otherwise provided in paragraph (3) of this
13 subsection, the appropriate board panel may release on medical parole
14 any inmate serving any sentence of imprisonment who has been
15 diagnosed pursuant to subsection b. of this section as suffering from
16 a terminal condition, disease or syndrome and is found by the
17 appropriate board panel to be so debilitated or incapacitated by the
18 terminal condition, disease or syndrome as to be permanently
19 physically incapable of committing a crime if released on parole.
20 Notwithstanding any provision of P.L.1979, c.441 (C.30:4-123.45 et
21 seq.) to the contrary, the appropriate board panel may release any such
22 inmate at any time during the term of the sentence. ¹An inmate placed
23 on parole pursuant to this section shall be subject to custody.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SLP committee amendments adopted June 16, 1997.

1 supervision and conditions as provided in section 15 of P.L.1979,
2 c.441 (C.30:3-123.59) and shall be subject to sanctions for a violation
3 of a condition of parole as provided in sections 16 through 21 of
4 P.L.1979, c.441 (C.30:4-123.60 through 30:4-123.65).¹

5 (3) No inmate serving any sentence for a violation of N.J.S.2C:11-
6 3; N.J.S.2C:11-4; N.J.S.2C:13-1; subsection a. of N.J.S.2C:14-2;
7 N.J.S.2C:15-1 in which the inmate, while in the course of committing
8 the theft, attempted to kill another, or purposely inflicted or attempted
9 to inflict serious bodily injury, or was armed with or used or
10 threatened the immediate use of a deadly weapon; subsection a. of
11 N.J.S.2C:17-1; or N.J.S.2C:24-4 or an attempt to commit any of these
12 offenses shall be eligible for the medical parole authorized under
13 paragraph (2) of this section.

14 b. A medical diagnosis that an inmate is suffering from a terminal
15 condition, disease or syndrome shall be made by two licensed
16 physicians designated by the Commissioner of Corrections. The
17 diagnosis shall include, but not be limited to:

18 (1) a description of the terminal condition, disease or syndrome;

19 (2) a prognosis concerning the likelihood of recovery from the
20 terminal condition, disease or syndrome;

21 (3) a description of the inmate's physical incapacity; and

22 (4) a description of the type of ongoing treatment that would be
23 required if the inmate were released on medical parole.

24 c. A request for a medical diagnosis to determine whether an
25 inmate is eligible for a medical parole under this section may be
26 submitted to the appropriate board panel by the Commissioner of
27 Corrections, the administrator or superintendent of a correctional
28 facility; the inmate; a member of the inmate's family or the inmate's
29 attorney. The request shall be submitted in a manner and form
30 prescribed by the board.

31 d. At least five working days prior to commencing its review of a
32 request for a medical parole, the appropriate board panel shall notify
33 the appropriate sentencing court; county prosecutor or, if the matter
34 was prosecuted by the Attorney General, the Attorney General; and
35 any victim or member of the family of a victim entitled to notice
36 relating to a parole or the consideration of a parole under the
37 provisions of P.L.1979, c.441 (C.30:4-123.45 et seq.). The notice
38 shall be given in the manner prescribed by the board and shall contain
39 all such information and documentation relating to the medical
40 diagnosis prepared pursuant to subsection b. of this section as the
41 board shall deem appropriate and necessary.

42 Upon receipt of the notice, the sentencing court; county prosecutor
43 or Attorney General, as the case may be; the victim or member of the
44 family of the victim, as the case may be, shall have 10 working days
45 to review the notice and submit comments to the appropriate board
46 panel. If a recipient of the notice does ¹not¹ submit comments within

1 that 10 day period following the receipt of the notice, the panel may
2 presume that the recipient does not wish to submit comments and
3 proceed with its consideration of the request for medical parole. Any
4 comments provided by a recipient shall be delivered to the appropriate
5 board panel in the same manner or by the same method as notice was
6 given by the panel to that recipient.

7 The information ¹~~[contain]~~ contained¹ in any notice given by a
8 panel pursuant to this subsection and the contents of any comments
9 submitted by a recipient in response thereto shall be confidential and
10 shall not be disclosed to any person who is not authorized to receive
11 or review that information ¹~~[of]~~ or¹ those comments.

12 Notice given under the provisions of this subsection shall be in lieu
13 of any other notice of parole consideration required under P.L.1979,
14 c.441 (C.30:4-123.45 et seq.).

15 Nothing in this subsection shall be construed to impair any party's
16 right to be heard pursuant to P.L.1979, c.441 (C.30:4-123.45 et seq.).

17 e. The appropriate board panel shall conduct its review of a
18 request for medical parole as expeditiously as possible.

19 The appropriate board panel shall provide written notice of its
20 decision to the sentencing court; the county prosecutor or Attorney
21 General, as the case may be; and any victim or member of a victim's
22 family given notice pursuant to subsection d. of this section.

23 f. Whenever an inmate is granted medical parole pursuant to this
24 section, the appropriate board shall require, as a condition precedent
25 to release, that the inmate's release plan include:

26 (1) identification of a community sponsor;

27 (2) verification of the availability of appropriate medical services
28 sufficient to meet the treatment requirements identified pursuant to
29 paragraph (4) of subsection b. of this section; and

30 (3) verification of appropriate housing which may include, but
31 ¹need¹ not be limited to, a hospital, hospice, nursing home facility or
32 other housing accommodation suitable to the inmate's medical
33 condition, disease or syndrome.

34 g. ¹~~[As]~~ In addition to any conditions imposed pursuant to
35 section 15 of P.L.1979, c.441 (C.30:4-123.59), as¹ a condition of
36 release on medical parole, the appropriate board panel may require an
37 inmate to submit to periodic medical diagnoses by a licensed physician.

38 h. If, after review of a medical diagnosis required under the
39 provisions of subsection g. of this section, the appropriate board panel
40 determines that a parolee released on medical parole is no longer so
41 debilitated or incapacitated by a terminal condition, disease or
42 syndrome as to be physically incapable ¹~~[or]~~ of¹ committing a crime,
43 ¹~~[or if a parolee released on medical parole commits a new crime.]~~¹
44 the parolee shall be returned to confinement in an appropriate facility
45 designated by the Commissioner of Corrections.

46 A decision to return the parolee to confinement pursuant to this

1 subsection shall be rendered only after a hearing by the appropriate
2 board panel or by a hearing officer designated by the chairman of the
3 board. ¹Nothing in this subsection shall be construed to limit the
4 authority of the board, an appropriate board panel or any parole
5 officer to address a violation of a condition of parole pursuant to
6 sections 16 through 21 of P.L.1979, c.441 (C.30:4-123.60 through
7 30:4-123.65).¹

8 i. The denial of a request for medical parole or the return of a
9 parolee to confinement under the provisions of subsection h. of this
10 section shall not preclude that inmate from being considered for parole
11 pursuant to subsection a. of section 7 of P.L.1979, c.441 (C.30:4-
12 123.51).

13

14 2. Section 7 of P.L.1979, c.441 (C.30:4-123.51) is amended to
15 read as follows:

16 7. a. Each adult inmate sentenced to a term of incarceration in a
17 county penal institution, or to a specific term of years at the State
18 Prison or the correctional institution for women shall become primarily
19 eligible for parole after having served any judicial or statutory
20 mandatory minimum term, or one-third of the sentence imposed where
21 no mandatory minimum term has been imposed less commutation time
22 for good behavior pursuant to N.J.S.2A:164-24 or R.S.30:4-140 and
23 credits for diligent application to work and other institutional
24 assignments pursuant to P.L.1972, c. 115 (C. 30:8-28.1 et seq.) or
25 R.S.30:4-92. Consistent with the provisions of the New Jersey Code
26 of Criminal Justice (N.J.S.2C:11-3, 2C:14-6, 2C:43-6, 2C:43-7),
27 commutation and work credits shall not in any way reduce any judicial
28 or statutory mandatory minimum term and such credits accrued shall
29 only be awarded subsequent to the expiration of the term.

30 b. Each adult inmate sentenced to a term of life imprisonment shall
31 become primarily eligible for parole after having served any judicial or
32 statutory mandatory minimum term, or 25 years where no mandatory
33 minimum term has been imposed less commutation time for good
34 behavior and credits for diligent application to work and other
35 institutional assignments. If an inmate sentenced to a specific term or
36 terms of years is eligible for parole on a date later than the date upon
37 which he would be eligible if a life sentence had been imposed, then in
38 such case the inmate shall be eligible for parole after having served 25
39 years, less commutation time for good behavior and credits for
40 diligent application to work and other institutional assignments.
41 Consistent with the provisions of the New Jersey Code of Criminal
42 Justice (N.J.S.2C:11-3, 2C:14-6, 2C:43-6, 2C:43-7), commutation and
43 work credits shall not in any way reduce any judicial or statutory
44 mandatory minimum term and such credits accrued shall only be
45 awarded subsequent to the expiration of the term.

46 c. Each inmate sentenced to a specific term of years pursuant to

1 the "Controlled Dangerous Substances Act," P.L.1970, c.226
2 (C.24:21-1 through 45) shall become primarily eligible for parole after
3 having served one-third of the sentence imposed less commutation
4 time for good behavior and credits for diligent application to work and
5 other institutional assignments.

6 d. Each adult inmate sentenced to an indeterminate term of years
7 as a young adult offender pursuant to N.J.S.2C:43-5 shall become
8 primarily eligible for parole consideration pursuant to a schedule of
9 primary eligibility dates developed by the board, less adjustment for
10 program participation. In no case shall the board schedule require that
11 the primary parole eligibility date for a young adult offender be greater
12 than the primary parole eligibility date required pursuant to this section
13 for the presumptive term for the crime authorized pursuant to
14 N.J.S.2C:44-1(f).

15 e. Each adult inmate sentenced to the Adult Diagnostic and
16 Treatment Center, Avenel, shall become primarily eligible for parole
17 upon recommendation by the special classification review board
18 pursuant to N.J.S.2C:47-5, except that no such inmate shall become
19 primarily eligible prior to the expiration of any mandatory or fixed
20 minimum term imposed pursuant to N.J.S.2C:14-6.

21 f. Each juvenile inmate committed to an indeterminate term shall
22 be immediately eligible for parole.

23 g. Each adult inmate of a county jail, workhouse or penitentiary
24 shall become primarily eligible for parole upon service of 60 days of
25 his aggregate sentence or as provided for in subsection a. of this
26 section, whichever is greater. Whenever any such inmate's parole
27 eligibility is within six months of the date of such sentence, the judge
28 shall state such eligibility on the record which shall satisfy all public
29 and inmate notice requirements. The chief executive officer of the
30 institution in which county inmates are held shall generate all reports
31 pursuant to subsection d. of section 10 of P.L.1979, c.441
32 (C.30:4-123.54). The parole board shall have the authority to
33 promulgate time periods applicable to the parole processing of inmates
34 of county penal institutions, except that no inmate may be released
35 prior to the primary eligibility date established by this subsection,
36 unless consented to by the sentencing judge. No inmate sentenced to
37 a specific term of years at the State Prison or the correctional
38 institution for women shall become primarily eligible for parole until
39 service of a full nine months of his aggregate sentence.

40 h. When an inmate is sentenced to more than one term of
41 imprisonment, the primary parole eligibility terms calculated pursuant
42 to this section shall be aggregated by the board for the purpose of
43 determining the primary parole eligibility date, except that no juvenile
44 commitment shall be aggregated with any adult sentence. The board
45 shall promulgate rules and regulations to govern aggregation under
46 this subsection.

1 i. The primary eligibility date shall be computed by a designated
2 representative of the board and made known to the inmate in writing
3 not later than 90 days following the commencement of the sentence.
4 In the case of an inmate sentenced to a county penal institution such
5 notice shall be made pursuant to subsection g. of this section. Each
6 inmate shall be given the opportunity to acknowledge in writing the
7 receipt of such computation. Failure or refusal by the inmate to
8 acknowledge the receipt of such computation shall be recorded by the
9 board but shall not constitute a violation of this subsection.

10 j. Except as provided in this subsection, each inmate sentenced
11 pursuant to N.J.S.2A:113-4 for a term of life imprisonment,
12 N.J.S.2A:164-17 for a fixed minimum and maximum term or
13 N.J.S.2C:1-1(b) shall not be primarily eligible for parole on a date
14 computed pursuant to this section, but shall be primarily eligible on a
15 date computed pursuant to P.L.1948, c.84 (C.30:4-123.1 et seq.),
16 which is continued in effect for this purpose. Inmates classified as
17 second, third or fourth offenders pursuant to section 12 of P.L.1948,
18 c.84 (C.30:4-123.12) shall become primarily eligible for parole after
19 serving one-third, one-half or two-thirds of the maximum sentence
20 imposed, respectively, less in each instance commutation time for good
21 behavior and credits for diligent application to work and other
22 institutional assignments; provided, however, that if the prosecuting
23 attorney or the sentencing court advises the board that the punitive
24 aspects of the sentence imposed on such inmates will not have been
25 fulfilled by the time of parole eligibility calculated pursuant to this
26 subsection, then the inmate shall not become primarily eligible for
27 parole until serving an additional period which shall be one-half of the
28 difference between the primary parole eligibility date calculated
29 pursuant to this subsection and the parole eligibility date calculated
30 pursuant to section 12 of P.L.1948, c.84 (C.30:4-123.12). If the
31 prosecuting attorney or the sentencing court advises the board that the
32 punitive aspects of the sentence have not been fulfilled, such advice
33 need not be supported by reasons and will be deemed conclusive and
34 final. Any such decision shall not be subject to judicial review except
35 to the extent mandated by the New Jersey and United States
36 Constitutions. The board shall, reasonably prior to considering any
37 such case, advise the prosecuting attorney and the sentencing court of
38 all information relevant to such inmate's parole eligibility.

39 k. ¹Notwithstanding any provisions of this section or N.J.S.2C:47-
40 5 to the contrary, a person sentenced to imprisonment pursuant to
41 paragraph (2) or (3) of subsection b. of N.J.S.2C:11-3 shall not be
42 eligible for parole.

43 l. ¹ Notwithstanding the provisions of subsections a. ¹[thorough]
44 through ¹ j. of this section, the appropriate board panel, as provided in
45 section 1 of P.L. , c. (C.)(now pending before the Legislature
46 as this bill), may release an inmate serving a sentence of imprisonment

1 on medical parole at anytime.

2 (cf: P.L.1997, c.60, s.3)

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4 3. This act shall take effect immediately.

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9 Permits medical parole for certain terminally ill or severely
10 incapacitated inmates.