

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 22

STATE OF NEW JERSEY

ADOPTED MARCH 3, 1997

Sponsored by Assemblyman **HOLZAPFEL** and
Assemblywoman **Vandervalk**

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:

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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.

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

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.

1 paragraph (2) of this section.

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

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

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

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

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

12 c. A request for a medical diagnosis to determine whether an
13 inmate is eligible for a medical parole under this section may be
14 submitted to the appropriate board panel by the Commissioner of
15 Corrections, the administrator or superintendent of a correctional
16 facility; the inmate; a member of the inmate's family or the inmate's
17 attorney. The request shall be submitted in a manner and form
18 prescribed by the board.

19 d. At least five working days prior to commencing its review of a
20 request for a medical parole, the appropriate board panel shall notify
21 the appropriate sentencing court; county prosecutor or, if the matter
22 was prosecuted by the Attorney General, the Attorney General; and
23 any victim or member of the family of a victim entitled to notice
24 relating to a parole or the consideration of a parole under the
25 provisions of P.L.1979, c.441 (C.30:4-123.45 et seq.). The notice
26 shall be given in the manner prescribed by the board and shall contain
27 all such information and documentation relating to the medical
28 diagnosis prepared pursuant to subsection b. of this section as the
29 board shall deem appropriate and necessary.

30 Upon receipt of the notice, the sentencing court; county prosecutor
31 or Attorney General, as the case may be; the victim or member of the
32 family of the victim, as the case may be, shall have 10 working days
33 to review the notice and submit comments to the appropriate board
34 panel. If a recipient of the notice does submit comments within that
35 10 day period following the receipt of the notice, the panel may
36 presume that the recipient does not wish to submit comments and
37 proceed with its consideration of the request for medical parole. Any
38 comments provided by a recipient shall be delivered to the appropriate
39 board panel in the same manner or by the same method as notice was
40 given by the panel to that recipient.

41 The information contain in any notice given by a panel pursuant to
42 this subsection and the contents of any comments submitted by a
43 recipient in response thereto shall be confidential and shall not be
44 disclosed to any person who is not authorized to receive or review that
45 information of those comments.

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

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

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

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

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

15 (1) identification of a community sponsor;

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

19 (3) verification of appropriate housing which may include, but not
20 be limited to, a hospital, hospice, nursing home facility or other
21 housing accommodation suitable to the inmate's medical condition,
22 disease or syndrome.

23 g. As a condition of release on medical parole, the appropriate
24 board panel may require an inmate to submit to periodic medical
25 diagnoses by a licensed physician.

26 h. If, after review of a medical diagnosis required under the
27 provisions of subsection g. of this section, the appropriate board panel
28 determines that a parolee released on medical parole is no longer so
29 debilitated or incapacitated by a terminal condition, disease or
30 syndrome as to be physically incapable or committing a crime, or if a
31 parolee released on medical parole commits a new crime, the parolee
32 shall be returned to confinement in an appropriate facility designated
33 by the Commissioner of Corrections.

34 A decision to return the parolee to confinement pursuant to this
35 subsection shall be rendered only after a hearing by the appropriate
36 board panel or by a hearing officer designated by the chairman of the
37 board.

38 i. The denial of a request for medical parole or the return of a
39 parolee to confinement under the provisions of subsection h. of this
40 section shall not preclude that inmate from being considered for parole
41 pursuant to subsection a. of section 7 of P.L.1979, c.441 (C.30:4-
42 123.51).

43
44 2. Section 7 of P.L.1979, c.441 (C.30:4-123.51) is amended to
45 read as follows:

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

15 b. Each adult inmate sentenced to a term of life imprisonment shall
16 become primarily eligible for parole after having served any judicial
17 or statutory mandatory minimum term, or 25 years where no
18 mandatory minimum term has been imposed less commutation time
19 for good behavior and credits for diligent application to work and
20 other institutional assignments. If an inmate sentenced to a specific
21 term or terms of years is eligible for parole on a date later than the
22 date upon which he would be eligible if a life sentence had been
23 imposed, then in such case the inmate shall be eligible for parole after
24 having served 25 years, less commutation time for good behavior and
25 credits for diligent application to work and other institutional
26 assignments. Consistent with the provisions of the New Jersey Code
27 of Criminal Justice (N.J.S.2C:11-3, 2C:14-6, 2C:43-6, 2C:43-7),
28 commutation and work credits shall not in any way reduce any judicial
29 or statutory mandatory minimum term and such credits accrued shall
30 only be awarded subsequent to the expiration of the term.

31 c. Each inmate sentenced to a specific term of years pursuant to
32 the "Controlled Dangerous Substances Act," P.L.1970, c.226
33 (C.24:21-1 through 45) shall become primarily eligible for parole after
34 having served one-third of the sentence imposed less commutation
35 time for good behavior and credits for diligent application to work
36 and other institutional assignments.

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

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

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

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

26 h. When an inmate is sentenced to more than one term of
27 imprisonment, the primary parole eligibility terms calculated pursuant
28 to this section shall be aggregated by the board for the purpose of
29 determining the primary parole eligibility date, except that no juvenile
30 commitment shall be aggregated with any adult sentence. The board
31 shall promulgate rules and regulations to govern aggregation under
32 this subsection.

33 i. The primary eligibility date shall be computed by a designated
34 representative of the board and made known to the inmate in writing
35 not later than 90 days following the commencement of the sentence.
36 In the case of an inmate sentenced to a county penal institution such
37 notice shall be made pursuant to subsection g. of this section. Each
38 inmate shall be given the opportunity to acknowledge in writing the
39 receipt of such computation. Failure or refusal by the inmate to
40 acknowledge the receipt of such computation shall be recorded by the
41 board but shall not constitute a violation of this subsection.

42 j. Except as provided in this subsection, each inmate sentenced
43 pursuant to N.J.S.2A:113-4 for a term of life imprisonment,
44 N.J.S.2A:164-17 for a fixed minimum and maximum term or
45 N.J.S.2C:1-1(b) shall not be primarily eligible for parole on a date

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

26 k. Notwithstanding the provisions of subsections a. through j. of
27 this section, the appropriate board panel, as provided in section 1 of
28 P.L. _____, c. _____ (C. _____)(now pending before the Legislature as this bill),
29 may release an inmate serving a sentence of imprisonment on medical
30 parole at anytime

31 (cf: P.L.1982, c.71, s.2)

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33 3. This act shall take effect immediately.

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38 _____
39 Permits medical parole for certain terminally ill or severely
incapacitated inmates.