

SENATE, No. 2001

STATE OF NEW JERSEY

INTRODUCED APRIL 17, 1997

By Senators CIESLA and MATHEUSSEN

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.

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
31 paragraph (2) of this section.

32 b. A medical diagnosis that an inmate is suffering from a terminal
33 condition, disease or syndrome shall be made by two licensed
34 physicians designated by the Commissioner of Corrections. The

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

Matter underlined thus is new matter.

1 diagnosis shall include, but not be limited to:

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (1) identification of a community sponsor;

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

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

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

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

29 A decision to return the parolee to confinement pursuant to this
30 subsection shall be rendered only after a hearing by the appropriate
31 board panel or by a hearing officer designated by the chairman of the
32 board.

33 i. The denial of a request for medical parole or the return of a
34 parolee to confinement under the provisions of subsection h. of this
35 section shall not preclude that inmate from being considered for parole
36 pursuant to subsection a. of section 7 of P.L.1979, c.441 (C.30:4-
37 123.51).

38
39 2. Section 7 of P.L.1979, c.441 (C.30:4-123.51) is amended to
40 read as follows:

41 7. a. Each adult inmate sentenced to a term of incarceration in a
42 county penal institution, or to a specific term of years at the State
43 Prison or the correctional institution for women shall become primarily
44 eligible for parole after having served any judicial or statutory
45 mandatory minimum term, or one-third of the sentence imposed where
46 no mandatory minimum term has been imposed less commutation time

1 for good behavior pursuant to N.J.S.2A:164-24 or R.S.30:4-140 and
2 credits for diligent application to work and other institutional
3 assignments pursuant to P.L.1972, c. 115 (C. 30:8-28.1 et seq.) or
4 R.S.30:4-92. Consistent with the provisions of the New Jersey Code
5 of Criminal Justice (N.J.S.2C:11-3, 2C:14-6, 2C:43-6, 2C:43-7),
6 commutation and work credits shall not in any way reduce any judicial
7 or statutory mandatory minimum term and such credits accrued shall
8 only be awarded subsequent to the expiration of the term.

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

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

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

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

46 f. Each juvenile inmate committed to an indeterminate term shall

1 be immediately eligible for parole.

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

19 h. When an inmate is sentenced to more than one term of
20 imprisonment, the primary parole eligibility terms calculated pursuant
21 to this section shall be aggregated by the board for the purpose of
22 determining the primary parole eligibility date, except that no juvenile
23 commitment shall be aggregated with any adult sentence. The board
24 shall promulgate rules and regulations to govern aggregation under
25 this subsection.

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

35 j. Except as provided in this subsection, each inmate sentenced
36 pursuant to N.J.S.2A:113-4 for a term of life imprisonment,
37 N.J.S.2A:164-17 for a fixed minimum and maximum term or
38 N.J.S.2C:1-1(b) shall not be primarily eligible for parole on a date
39 computed pursuant to this section, but shall be primarily eligible on
40 a date computed pursuant to P.L.1948, c.84 (C.30:4-123.1 et seq.),
41 which is continued in effect for this purpose. Inmates classified as
42 second, third or fourth offenders pursuant to section 12 of P.L.1948,
43 c.84 (C.30:4-123.12) shall become primarily eligible for parole after
44 serving one-third, one-half or two-thirds of the maximum sentence
45 imposed, respectively, less in each instance commutation time for
46 good behavior and credits for diligent application to work and other

1 institutional assignments; provided, however, that if the prosecuting
2 attorney or the sentencing court advises the board that the punitive
3 aspects of the sentence imposed on such inmates will not have been
4 fulfilled by the time of parole eligibility calculated pursuant to this
5 subsection, then the inmate shall not become primarily eligible for
6 parole until serving an additional period which shall be one-half of the
7 difference between the primary parole eligibility date calculated
8 pursuant to this subsection and the parole eligibility date calculated
9 pursuant to section 12 of P.L.1948, c.84 (C.30:4-123.12). If the
10 prosecuting attorney or the sentencing court advises the board that the
11 punitive aspects of the sentence have not been fulfilled, such advice
12 need not be supported by reasons and will be deemed conclusive and
13 final. Any such decision shall not be subject to judicial review except
14 to the extent mandated by the New Jersey and United States
15 Constitutions. The board shall, reasonably prior to considering any
16 such case, advise the prosecuting attorney and the sentencing court
17 of all information relevant to such inmate's parole eligibility.

18 k. Notwithstanding the provisions of subsections a. thorough j. of
19 this section, the appropriate board panel, as provided in section 1 of
20 P.L. , c. (C.)(now pending before the Legislature as this bill),
21 may release an inmate serving a sentence of imprisonment on medical
22 parole at anytime

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

24

25 3. This act shall take effect immediately.

26

27 STATEMENT

28

29 This bill amends and supplements the "Parole Act of 1979"
30 (P.L.1979, c.441; C.30:4-123.45 et seq.) to establish a special medical
31 parole for certain inmates who are terminally ill or severely
32 incapacitated.

33 Under the provisions of the bill, inmates would be eligible for a
34 special medical parole if they are suffering from a terminal condition,
35 disease or syndrome and the appropriate parole board panel finds that
36 they are so debilitated or incapacitated by that condition, disease or
37 syndrome that they would be permanently physically incapable of
38 committing a crime if released. As used in the bill, "terminal
39 condition, disease or syndrome" means a prognosis that the inmate has
40 six months or less to live.

41 The request for a medical diagnosis for the purpose of determining
42 whether an inmate is eligible for a special medical parole may be
43 submitted to the appropriate board panel by the Commissioner of
44 Corrections, the administrator or supervisor of a correctional facility,
45 the inmate, the inmate's family or the inmate's attorney. If the board
46 panel approves the request, the inmate is to be diagnosed by two

1 licensed physicians designated by the Commissioner of Corrections.
2 At a minimum, the diagnosis is to include (1) a description of the
3 terminal condition, disease or syndrome; (2) a prognosis of the
4 likelihood of recovery; (3) a description of the inmate's physical
5 incapacity; and (4) a description of the type of ongoing treatment that
6 would be required if the inmate were released on medical parole.

7 At least five working days before beginning any review of a request
8 for a medical parole, the board panel must notify the sentencing court;
9 the county prosecutor or, if the case was prosecuted by the Attorney
10 General, the Attorney General; and the victim or a member of the
11 victim's family, as provided under the general notification procedures
12 for victims and their families in the "Parole Act of 1979." The
13 recipients are afforded 10 working days in which to provide their
14 comments to the board panel. If any of the recipients does not submit
15 comments within that time period, the bill specifies that the board
16 panel may presume that particular party does not wish to comment and
17 proceed with its consideration of the request for medical parole.

18 The board panel is to provide written notice of its decision on an
19 inmate's request for medical parole to the sentencing court; the county
20 prosecutor, or Attorney General, if appropriate; and the victim or
21 member of the victim's family, as the case may be.

22 Prior to releasing an inmate on a medical parole, the board panel
23 must be provided with (1) the identification of the inmate's community
24 sponsor; (2) a verification that appropriate medical services are
25 available for the inmate; and (3) a verification that appropriate housing
26 is available for the inmate.

27 The bill also authorizes the board panel to require an inmate on
28 special medical parole to submit to periodic medical diagnoses by a
29 licensed physician.

30 Further, the bill clarifies that if the board panel determines that a
31 medical parolee is no longer so debilitated or incapacitated by a
32 terminal condition, disease or syndrome as to be physically incapable
33 of committing a crime, or if a medical parolee commits a new crime,
34 that parolee shall be returned to confinement in a correction facility.

35 Finally, the bill specifies that these medical paroles are not available
36 to inmates who have been incarcerated for violent offenses such as
37 murder, manslaughter, aggravated sexual assault, armed robbery,
38 kidnaping, aggravated arson and endangering the welfare of a child.

39 The provisions of this bill are based upon the recommendations of
40 the Governor's Study Commission on Parole.

41

42

43

44

45 Permits medical parole for certain terminally ill or severely
46 incapacitated inmates.