

[First Reprint]
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:

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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. ¹An inmate placed
23 on parole pursuant to this section shall be subject to custody,
24 supervision and conditions as provided in section 15 of P.L.1979,
25 c.441 (C.30:3-123.59) and shall be subject to sanctions for a violation
26 of a condition of parole as provided in sections 16 through 21 of
27 P.L.1979, c.441 (C.30:4-123.60 through 30:4-123.65).¹

28 (3) No inmate serving any sentence for a violation of N.J.S.2C:11-
29 3; N.J.S.2C:11-4; N.J.S.2C:13-1; subsection a. of N.J.S.2C:14-2;
30 N.J.S.2C:15-1 in which the inmate, while in the course of committing
31 the theft, attempted to kill another, or purposely inflicted or attempted

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SLP committee amendments adopted June 16, 1997.

1 to inflict serious bodily injury, or was armed with or used or
2 threatened the immediate use of a deadly weapon; subsection a. of
3 N.J.S.2C:17-1; or N.J.S.2C:24-4 or an attempt to commit any of these
4 offenses shall be eligible for the medical parole authorized under
5 paragraph (2) of this section.

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

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

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

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

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

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

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

34 Upon receipt of the notice, the sentencing court; county prosecutor
35 or Attorney General, as the case may be; the victim or member of the
36 family of the victim, as the case may be, shall have 10 working days
37 to review the notice and submit comments to the appropriate board
38 panel. If a recipient of the notice does ¹not¹ submit comments within
39 that 10 day period following the receipt of the notice, the panel may
40 presume that the recipient does not wish to submit comments and
41 proceed with its consideration of the request for medical parole. Any
42 comments provided by a recipient shall be delivered to the appropriate
43 board panel in the same manner or by the same method as notice was
44 given by the panel to that recipient.

45 The information ¹[contain] contained¹ in any notice given by a panel
46 pursuant to this subsection and the contents of any comments

1 submitted by a recipient in response thereto shall be confidential and
2 shall not be disclosed to any person who is not authorized to receive
3 or review that information ¹[of] or¹ those comments.

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

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

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

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

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

18 (1) identification of a community sponsor;

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

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

26 g. ¹[As] In addition to any conditions imposed pursuant to section
27 15 of P.L.1979, c.441 (C.30:4-123.59), as¹ a condition of release on
28 medical parole, the appropriate board panel may require an inmate to
29 submit to periodic medical diagnoses by a licensed physician.

30 h. If, after review of a medical diagnosis required under the
31 provisions of subsection g. of this section, the appropriate board panel
32 determines that a parolee released on medical parole is no longer so
33 debilitated or incapacitated by a terminal condition, disease or
34 syndrome as to be physically incapable ¹[or] of¹ committing a crime,
35 ¹[or if a parolee released on medical parole commits a new crime,]¹ the
36 parolee shall be returned to confinement in an appropriate facility
37 designated by the Commissioner of Corrections.

38 A decision to return the parolee to confinement pursuant to this
39 subsection shall be rendered only after a hearing by the appropriate
40 board panel or by a hearing officer designated by the chairman of the
41 board. ¹Nothing in this subsection shall be construed to limit the
42 authority of the board, an appropriate board panel or any parole
43 officer to address a violation of a condition of parole pursuant to
44 sections 16 through 21 of P.L.1979, c.441 (C.30:4-123.60 through
45 30:4-123.65).¹

46 i. The denial of a request for medical parole or the return of a

1 parolee to confinement under the provisions of subsection h. of this
2 section shall not preclude that inmate from being considered for parole
3 pursuant to subsection a. of section 7 of P.L.1979, c.441 (C.30:4-
4 123.51).

5

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

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

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

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

44 d. Each adult inmate sentenced to an indeterminate term of years
45 as a young adult offender pursuant to N.J.S.2C:43-5 shall become
46 primarily eligible for parole consideration pursuant to a schedule of

1 primary eligibility dates developed by the board, less adjustment for
2 program participation. In no case shall the board schedule require that
3 the primary parole eligibility date for a young adult offender be greater
4 than the primary parole eligibility date required pursuant to this section
5 for the presumptive term for the crime authorized pursuant to
6 N.J.S.2C:44-1(f).

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

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

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

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

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

1 board but shall not constitute a violation of this subsection.

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

31 k. ¹Notwithstanding any provisions of this section or N.J.S.2C:47-
32 5 to the contrary, a person sentenced to imprisonment pursuant to
33 paragraph (2) or (3) of subsection b. of N.J.S.2C:11-3 shall not be
34 eligible for parole.

35 l.¹ Notwithstanding the provisions of subsections a. [thorough]
36 through¹ j. of this section, the appropriate board panel, as provided in
37 section 1 of P.L. , c. (C.)(now pending before the Legislature
38 as this bill), may release an inmate serving a sentence of imprisonment
39 on medical parole at anytime.

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

41

42 3. This act shall take effect immediately.

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3 Permits medical parole for certain terminally ill or severely
4 incapacitated inmates.