

SENATE No. 2304

The Commonwealth of Massachusetts

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In the One Hundred and Eighty-Ninth General Court
(2015-2016)
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SENATE, Tuesday, May 31, 2016

The committee on Health Care Financing, to whom was referred the Senate Bill relative to medical placement of terminal and incapacitated inmates (Senate, No. 843),-- reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2304).

For the committee,
James T. Welch

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An Act relative to medical placement of terminal and incapacitated inmates.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 127 of the General Laws is hereby amended by inserting after
2 section 119 the following section:-

3 Section 119A. (a) As used in this section, the following words shall, unless the context
4 clearly requires otherwise, have the following meanings:

5 “Commissioner”, the commissioner of the department of correction.

6 “Conditional medical probation plan”, a comprehensive written medical and psychosocial
7 care plan that is specific to the prisoner and shall include, but not be limited to: (i) the proposed
8 course of treatment; (ii) the proposed site for treatment and post-treatment care; (iii)
9 documentation that medical providers qualified to provide the medical services identified in the
10 conditional medical probation plan are prepared to provide those services; and (iv) the financial
11 program in place to cover the cost of the plan for the duration of the conditional medical
12 probation which shall include eligibility for enrollment in commercial insurance, Medicare or

13 Medicaid or access to other adequate financial resources for the duration of the conditional
14 medical probation.

15 “Department”, the department of correction.

16 “Permanent incapacitation”, as determined by a licensed physician, a permanent and
17 irreversible physical incapacitation as a result of an existing physical or medical condition that
18 was unknown at the time of sentencing or, since the time of sentencing, has progressed such that
19 the prisoner does not pose a public safety risk.

20 “Secretary”, the secretary of public safety and security.

21 “Terminal illness”, an incurable condition caused by illness or disease that was unknown
22 at the time of sentencing or, since the time of sentencing, has progressed to render the prisoner
23 terminally ill, that will likely cause the death of the prisoner within 18 months and that is so
24 debilitating that the prisoner does not pose a public safety risk.

25 (b) Except as otherwise provided in this section and notwithstanding any other general or
26 special law to the contrary, a prisoner may be eligible for conditional medical probation due to a
27 terminal illness or permanent and total incapacitation under the procedures described in
28 subsections (c) and (d).

29 (c) The superintendent of the correctional facility shall consider a prisoner for conditional
30 medical probation upon a request for conditional medical probation filed by the prisoner, the
31 prisoner’s attorney, the prisoner’s next of kin or a member of the correctional staff. The
32 superintendent shall review the request for consideration and make a recommendation. If the
33 superintendent recommends conditional medical placement, the commissioner shall petition a

34 court of original jurisdiction for an order permitting the prisoner to be released. The
35 commissioner shall notify, in writing, the district attorney, the prisoner, the prisoner's attorney,
36 the prisoner's next of kin or a correction officer, and, if applicable under chapter 258B, the
37 victim or the victim's family, that the prisoner is being considered for conditional medical
38 probation subject to this section and the parties receiving the notice shall have an opportunity to
39 be heard through a written or oral statement as to the release of the prisoner. The commissioner
40 shall file an affidavit with the petition confirming that the notice has been provided. The
41 commissioner shall file with the petition a conditional medical probation plan and an assessment
42 of the prisoner's medical and psychosocial condition and the risk the prisoner poses to society,
43 including:

44 (i) a written diagnosis by a physician licensed to practice medicine in the
45 commonwealth under section 2 of chapter 112 that includes: (A) a description of the terminal
46 illness, physical incapacity or chronic condition; and (B) a prognosis concerning the likelihood
47 of recovery from the terminal illness, physical incapacity or chronic condition; provided,
48 however, that the physician shall be employed by the department or shall be a contract provider
49 used by the department for the evaluation and recommended treatment of prisoners; and

50 (ii) an assessment of the risk for violence and recidivism that the prisoner poses to
51 society.

52 If the superintendent denies the request for conditional medical probation, the
53 superintendent shall provide to the prisoner a statement, in writing, of the reason for the denial.
54 A prisoner electing to appeal a denial made by the superintendent shall file an appeal with the
55 commissioner within 30 days.

56 (d) A sheriff shall consider a prisoner for conditional medical probation upon a request
57 for conditional medical probation filed by the prisoner, the prisoner's attorney, the prisoner's
58 next of kin, the sheriff's medical provider, or a member of the correctional staff. The sheriff shall
59 review the request within 15 days of receipt. If, upon an investigation of the request, the sheriff
60 determines that the request should be approved, the sheriff shall petition a court of original
61 jurisdiction for an order permitting the prisoner to be released. The sheriff shall notify, in
62 writing, the district attorney, the prisoner, the prisoner's attorney, the prisoner's next of kin and,
63 if applicable under chapter 258B, the victim or the victim's family, that the prisoner is being
64 considered for conditional medical parole subject to this section and the parties receiving the
65 notice shall have an opportunity to be heard through a written or oral statement as to the release
66 of the prisoner. The sheriff shall file an affidavit with the petition confirming that the notice has
67 been provided. The sheriff shall file with the petition a conditional medical probation plan and an
68 assessment of the prisoner's medical and psychosocial condition and the risk the prisoner poses
69 to society, including:

70 (i) a written diagnosis by a physician licensed to practice medicine in the
71 commonwealth under section 2 of chapter 112 that includes: (A) a description of the terminal
72 illness, physical incapacity or chronic condition; and (B) a prognosis concerning the likelihood
73 of recovery from the terminal illness, physical incapacity or chronic condition; provided,
74 however, that the physician shall be employed by the department or sheriff, or shall be employed
75 by a hospital or medical facility used by the department or sheriff for the medical treatment of
76 prisoners; and

77 (ii) an assessment of the risk for violence and recidivism that the prisoner poses to
78 society.

79 If the sheriff denies the request for conditional medical parole, the sheriff shall provide to
80 the prisoner a statement, in writing, of the reason for the denial. A prisoner electing to appeal a
81 denial made by the sheriff shall file an appeal with the secretary within 30 days.

82 (e) The authority to grant a conditional medical probation shall reside solely within the
83 discretion of the judge. The judge shall make a determination of whether to grant conditional
84 medical probation within 15 days after receiving a petition from the commissioner or sheriff for
85 release of a prisoner with a terminal illness and within 30 days after receiving a motion for
86 release of a permanently and totally disabled prisoner.

87 A denial of conditional medical probation by the judge shall not affect a prisoner's
88 eligibility for any other form of release under applicable law.

89 Any decision made by the judge pursuant to this section shall be final; provided,
90 however, that the decision shall not preclude a prisoner's eligibility for conditional medical
91 probation in the future.

92 (f) A prisoner granted release under this section shall be under the jurisdiction,
93 supervision and control of the judiciary. The judge shall impose terms and conditions for such
94 release that shall apply through the date upon which the prisoner's sentence would have expired.
95 These conditions shall require, but need not be limited to requiring:

96 (i) the released prisoner's care be consistent with the care specified in the
97 conditional medical probation plan as approved by the judge;

98 (ii) the released prisoner to cooperate with and comply with the prescribed
99 conditional medical probation plan and with reasonable requirements of medical providers to
100 whom the released prisoner is to be referred for continued treatment;

101 (iii) the released prisoner to be subject to supervision by the office of probation;
102 and

103 (iv) the released prisoner to comply with any conditions of release set by the
104 judge.

105 Not less than 24 hours before the date of a conditional medical probation, the office of
106 the commissioner of probation shall notify, in writing, the district attorney, the department of
107 state police and the police department in the city or town in which the released prisoner shall
108 reside that the prisoner's request for release has been granted and the terms and conditions of
109 release.

110 The court may revise, alter or amend the terms and conditions of a conditional medical
111 probation at any time. The probation officer shall promptly arrest a prisoner and bring the
112 prisoner before a judge for a probation violation hearing if the officer receives credible
113 information that a prisoner has failed to comply with a reasonable condition set upon the
114 prisoner's release or if, upon discovery that the terminal illness or permanent and total disability
115 has improved to the extent that the prisoner would no longer be eligible for conditional medical
116 probation under this section. If the judge subsequently determines that the prisoner violated a
117 condition of the prisoner's conditional medical probation, the prisoner shall resume serving the
118 balance of the sentence with credit given only for the duration of the prisoner's conditional
119 medical probation served in compliance with all reasonable conditions in this subsection.

120 Revocation of a prisoner's conditional medical probation due to a change in the prisoner's
121 medical condition shall not preclude a prisoner's eligibility for conditional medical probation in
122 the future or for another form of release under applicable law.

123 (g) The commissioner and the secretary shall promulgate rules and regulations necessary
124 to implement this section within 6 months of the enactment of this legislation.

125 (h) The commissioner, sheriffs, and the secretary shall educate, inform and train
126 employees about this section and shall furnish those employees with appropriate resources and
127 services to implement this section.

128 (i) The commissioner, the secretary and the office of the commissioner of probation shall
129 together file an annual report not later than March 1 with the clerks of the house of
130 representatives and the senate, the chairs of the house and senate committees on ways and means
131 and the senate and house chairs of the joint committee on the judiciary detailing: (i) each
132 prisoner in the custody of the department who is receiving treatment for a terminal illness or
133 condition and each prisoner in the custody of the department who is receiving treatment for a
134 permanent or incapacitating disability, including the race and ethnicity of the prisoner, the
135 offense under which the prisoner was sentenced, and a detailed description of the prisoner's
136 physical and mental condition, provided, however, that any identifying information shall be kept
137 confidential; (ii) the number of prisoners in the custody of the department or the sheriffs who
138 applied for conditional medical parole or conditional medical probation under subsections (c),
139 (d), and (e) and the race and ethnicity of each applicant; (iii) the number of prisoners who have
140 been granted conditional medical parole or conditional medical probation and the race and
141 ethnicity of each prisoner granted release; (iv) the nature of the illness of the applicants; (v) the

142 counties where the prisoners have been released to; (vi) the nature of the placement pursuant to
143 the conditional medical parole plan or conditional medical probation plan; (vii) the categories of
144 reasons for denial for prisoners who have been denied conditional medical parole or conditional
145 medical parole; (viii) the number of prisoners petitioning for conditional medical parole or
146 conditional medical probation on more than 1 occasion; and (ix) the number of prisoners released
147 who have been returned to the custody of the department and the reasons for those returns.