

SENATE No. 2415

The Commonwealth of Massachusetts

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In the One Hundred and Eighty-Ninth General Court
(2015-2016)
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SENATE, Friday, July 8, 2016

The committee on Ways and Means, to whom was referred the Senate Bill relative to medical placement of terminal and incapacitated inmates (Senate, No. 843) (the committee on Health Care Financing having recommended that the bill be amended by substituting a new draft (Senate, No. 2304),-- reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2415).

For the committee,
Karen E. Spilka

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**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

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 have the following
4 meanings unless the context clearly requires otherwise:

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

13 “Department”, the department of correction.

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

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

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

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

27 (c) The superintendent of a correctional facility shall consider a prisoner for conditional
28 medical parole upon a written request for conditional medical parole filed by the prisoner, the
29 prisoner’s attorney, the prisoner’s next of kin or a member of the correctional staff. The
30 superintendent shall review the request for consideration and make a recommendation to the
31 commissioner within 21 days of receipt of the request. If the superintendent recommends
32 conditional medical parole, the commissioner shall petition the parole board for an order
33 permitting the prisoner to be released. The commissioner shall notify, in writing, the district
34 attorney and the prisoner, the prisoner’s attorney, the prisoner’s next of kin or a member of the
35 correctional staff requesting the release of a prisoner for conditional medical parole and, if

36 applicable under chapter 258B, the victim or the victim's family, that the prisoner is being
37 considered for conditional medical parole. The parties receiving the notice shall have an
38 opportunity to be heard through a written or oral statement as to the release of the prisoner. The
39 commissioner shall file an affidavit with the petition confirming that the notice has been
40 provided. The commissioner shall file with the petition a conditional medical parole plan and an
41 assessment of the prisoner's medical and psychosocial condition and the risk the prisoner poses
42 to society, including:

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

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

51 If the superintendent denies the request for conditional medical parole, the superintendent
52 shall provide to the prisoner or the prisoner's attorney, the prisoner's next of kin or a member of
53 the correctional staff requesting the release of a prisoner for conditional medical parole on behalf
54 of the prisoner a statement, in writing, of the reason for the denial. A prisoner electing to appeal
55 a denial made by the superintendent shall file an appeal with the commissioner within 30 days of
56 receiving notice of the denial.

57 (d) A sheriff shall consider a prisoner for conditional medical parole upon a written
58 request for conditional medical parole filed by the prisoner, the prisoner's attorney, the
59 prisoner's next of kin, the sheriff's medical provider or a member of the correctional staff. The
60 sheriff shall review the request within 21 days of receipt of the request. If, after investigation of
61 the request, the sheriff determines that the request should be approved, the sheriff shall petition
62 the parole board for an order permitting the prisoner to be released. The sheriff shall notify, in
63 writing, the district attorney and the prisoner, the prisoner's attorney, the prisoner's next of kin or
64 a member of the correctional staff requesting the release of a prisoner for conditional medical
65 parole and, if applicable under chapter 258B, the victim or the victim's family, that the prisoner
66 is being considered for conditional medical parole subject to this section. The parties receiving
67 the notice shall have an opportunity to be heard through a written or oral statement as to the
68 release of the prisoner. The sheriff shall file an affidavit with the petition confirming that the
69 notice has been provided. The sheriff shall file with the petition a conditional medical parole plan
70 and an assessment of the prisoner's medical and psychosocial condition and the risk the prisoner
71 poses to society, including:

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

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

80 If the sheriff denies the request for conditional medical parole, the sheriff shall provide to
81 the prisoner or the prisoner's attorney, the prisoner's next of kin or a member of the correctional
82 staff requesting the release of a prisoner for conditional medical parole on behalf of the prisoner
83 a statement, in writing, of the reason for the denial. A prisoner electing to appeal a denial made
84 by the sheriff shall file an appeal with the secretary within 30 days of receiving notice of the
85 denial.

86 (e) The parole board shall conduct a hearing not later than 15 days after its receipt of the
87 commissioner's or sheriff's petition and shall issue a written decision within 30 days of receipt
88 of the commissioner's or sheriff's petition which shall be accompanied by a statement of reasons
89 for the decision, including a determination of each issue of fact or law necessary to the decision.
90 The parole board shall, upon making a determination that a prisoner is terminally ill or
91 permanently incapacitated, release a prisoner under conditional medical parole. A prisoner
92 granted release under this section shall be under the jurisdiction, supervision and control of the
93 parole board. The parole board shall impose terms and conditions for conditional medical parole
94 that shall apply through the date upon which the prisoner's sentence would have expired. These
95 conditions shall require, but shall not be limited to:

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

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

101 (iii) the released prisoner comply with conditions of release set by the parole
102 board.

103 Not less than 24 hours before the date of a prisoner's release due to conditional medical
104 parole, the parole board shall notify, in writing, the district attorney, the department of state
105 police, the police department in the city or town in which the released prisoner shall reside and,
106 if applicable under chapter 258B, the victim or the victim's family of the prisoner's release and
107 the terms and conditions of release.

108 The parole board may revise, alter or amend the terms and conditions of a conditional
109 medical parole at any time. The parole officer shall promptly arrest a prisoner and bring the
110 prisoner before the board for a parole violation hearing if the officer receives credible
111 information that a prisoner has failed to comply with a reasonable condition set upon the
112 prisoner's release or upon discovery that the terminal illness or permanent incapacitation has
113 improved to the extent that the prisoner would no longer be eligible for conditional medical
114 parole under this section. If the board subsequently determines that the prisoner violated a
115 condition of the prisoner's conditional medical parole, the prisoner shall resume serving the
116 balance of the sentence with credit given only for the duration of the prisoner's conditional
117 medical parole served in compliance with all reasonable conditions in this subsection.
118 Revocation of a prisoner's conditional medical parole due to a change in the prisoner's medical
119 condition shall not preclude a prisoner's eligibility for conditional medical parole in the future or
120 for another form of release permitted by law.

121 (f) A prisoner, commissioner or sheriff aggrieved by a decision made under this section
122 may petition for relief in the superior court in the jurisdiction of the correctional facility where

123 the prisoner resides for a de novo review of the denial. The court may affirm the decision of the
124 board, remand the matter for further proceedings before the board or set aside a decision of the
125 board if it finds by a preponderance of the evidence that the decision of the board was not
126 supported by substantial evidence or was arbitrary or capricious, an abuse of discretion or
127 otherwise not in accordance with the law. The court shall conduct its review not later than 21
128 days after receiving a petition from the commissioner or sheriff for release of a prisoner with a
129 terminal illness and within 30 days after receiving a petition for release of a permanently
130 incapacitated prisoner, unless more time is required for a hearing requested under this section.

131 Affirmation of the parole board's denial of conditional medical parole shall not affect a
132 prisoner's eligibility for any other form of release permitted by law.

133 A decision by the court pursuant to this section shall be final; provided, however, that the
134 decision shall not preclude a prisoner's eligibility for conditional medical parole in the future.

135 (g) The commissioner and the secretary shall promulgate rules and regulations necessary
136 to implement this section.

137 (h) The commissioner, sheriffs and the secretary shall educate, inform and train
138 employees about this section and shall provide those employees with appropriate resources and
139 services to implement this section.

140 (i) The commissioner, the secretary and the parole board shall together file an annual
141 report not later than March 1 with the clerks of the senate and the house of representatives, the
142 chairs of the senate and house committees on ways and means and the senate and house chairs of
143 the joint committee on the judiciary detailing: (i) each prisoner in the custody of the department
144 who is receiving treatment for a terminal illness and each prisoner in the custody of the

145 department who is receiving treatment for a permanent incapacitation, including the race and
146 ethnicity of the prisoner, the offense for which the prisoner was sentenced and a detailed
147 description of the prisoner's physical and mental condition; provided, however, that identifying
148 information shall be withheld from the report; (ii) the number of prisoners in the custody of the
149 department or the sheriffs who applied for conditional medical parole under subsections (c), (d),
150 and (e) and the race and ethnicity of each applicant; (iii) the number of prisoners who have been
151 granted conditional medical parole and the race and ethnicity of each prisoner granted release for
152 the prior fiscal year and total to date; (iv) the nature of the illness of the applicants for
153 conditional medical parole; (v) the counties to which the prisoners have been released; (vi) the
154 nature of the placement pursuant to the conditional medical parole plan; (vii) the categories of
155 reasons for denial for prisoners who have been denied conditional medical parole; (viii) the
156 number of prisoners petitioning for conditional medical parole on more than 1 occasion; (ix) the
157 number of prisoners released who have been returned to the custody of the department and the
158 reasons for those returns; and (x) the number of petitions for relief sought under subsection (f).

159 SECTION 2. The commissioner of correction and the secretary of public safety and
160 security shall promulgate rules and regulations necessary to implement section 119A of chapter
161 127 of the General Laws not later than 6 months after the effective date of this act.