

SENATE No. 874

The Commonwealth of Massachusetts

PRESENTED BY:

Patricia D. Jehlen

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	
<i>Sonia Chang-Diaz</i>	<i>Second Suffolk</i>	<i>1/30/2017</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/31/2017</i>
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>	<i>2/1/2017</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/2/2017</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>	<i>2/2/2017</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>	<i>2/2/2017</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>	<i>2/2/2017</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>2/2/2017</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>2/2/2017</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>	<i>2/3/2017</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>2/3/2017</i>
<i>Susan Williams Gifford</i>	<i>2nd Plymouth</i>	<i>2/3/2017</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>	<i>2/3/2017</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>	<i>2/3/2017</i>
<i>Cynthia S. Creem</i>	<i>First Middlesex and Norfolk</i>	<i>2/3/2017</i>
<i>Jose F. Tosado</i>	<i>9th Hampden</i>	<i>2/3/2017</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/3/2017</i>

<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>	<i>2/3/2017</i>
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>	<i>2/3/2017</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>2/7/2017</i>

SENATE No. 874

By Ms. Jehlen, a petition (accompanied by bill, Senate, No. 874) of Patricia D. Jehlen, Sonia Chang-Diaz, Jason M. Lewis, John F. Keenan and other members of the General Court for legislation relative to medical placement of terminal and incapacitated inmates. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 2433 OF 2015-2016.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

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, the commissioner’s medical provider or a member
30 of the correctional staff. The superintendent shall review the request for consideration and make

31 a recommendation to the commissioner within 21 days of receipt of the request. If the
32 superintendent recommends conditional medical parole, the commissioner shall petition the
33 parole board for an order permitting the prisoner to be released within 10 days of receipt of the
34 recommendation. The commissioner shall notify, in writing, the district attorney and the
35 prisoner, the prisoner's attorney, the prisoner's next of kin or a member of the correctional staff
36 requesting the release of a prisoner for conditional medical parole and, if applicable under
37 chapter 258B, the victim or the victim's family, that the prisoner is being considered for
38 conditional medical parole. The parties receiving the notice shall have an opportunity to be heard
39 through a written or oral statement as to the release of the prisoner. The commissioner shall file
40 an affidavit with the petition confirming that the notice has been provided. The commissioner
41 shall file with the petition a conditional medical parole plan and an assessment of the prisoner's
42 medical and psychosocial condition and the risk the prisoner poses 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 within 10 days of receipt of
63 the recommendation. The sheriff shall notify, in writing, the district attorney and the prisoner, the
64 prisoner's attorney, the prisoner's next of kin or a member of the correctional staff requesting the
65 release of a prisoner for conditional medical parole and, if applicable under chapter 258B, the
66 victim or the victim's family, that the prisoner is being considered for conditional medical parole
67 subject to this section. The parties receiving the notice shall have an opportunity to be heard
68 through a written or oral statement as to the release of the prisoner. The sheriff shall file an
69 affidavit with the petition confirming that the notice has been provided. The sheriff shall file with
70 the petition a conditional medical parole plan and an assessment of the prisoner's medical and
71 psychosocial condition and the risk the prisoner 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 If the prisoner eligible for conditional medical parole pursuant to this section is convicted
104 and serving a sentence pursuant to section 1 of chapter 265, the full membership of the parole
105 board shall conduct the hearing unless a member of the board is determined to be unavailable.
106 For the purposes of this section, the term “unavailable” shall mean that a board member has a
107 conflict of interest to the extent that the board member cannot render a fair and impartial decision
108 or that the appearance of a board member would be unduly burdensome because of illness,
109 incapacitation or other circumstance. Whether a member is unavailable under this section shall
110 be determined by the chair. Board members shall appear unless the chair determines them to be
111 unavailable. A parole hearing shall not proceed for a prisoner serving a sentence pursuant to said
112 section 1 of said chapter 265 unless a majority of the board is present at the public hearing. For
113 prisoners convicted and serving a sentence pursuant to said section 1 of said chapter 265, a vote
114 of 2/3 of the members present is required to grant conditional medical parole. The parole board
115 shall provide reasonable accommodations for prisoners appearing before it for a conditional
116 medical parole hearing under this section including, but not limited to, video teleconferencing
117 when appropriate.

118 Not less than 24 hours before the date of a prisoner’s release due to conditional medical
119 parole, the parole board shall notify, in writing, the district attorney, the department of state

120 police, the police department in the city or town in which the released prisoner shall reside and,
121 if applicable under chapter 258B, the victim or the victim's family of the prisoner's release and
122 the terms and conditions of release.

123 The parole board may revise, alter or amend the terms and conditions of a conditional
124 medical parole at any time. The parole officer shall promptly arrest a prisoner and bring the
125 prisoner before the board for a parole violation hearing if the officer receives credible
126 information that a prisoner has failed to comply with a reasonable condition set upon the
127 prisoner's release or upon discovery that the terminal illness or permanent incapacitation has
128 improved to the extent that the prisoner would no longer be eligible for conditional medical
129 parole under this section. If the board subsequently determines that the prisoner violated a
130 condition of the prisoner's conditional medical parole or that the terminal illness or permanent
131 incapacitation has improved to the extent that the prisoner would no longer be eligible for
132 conditional medical parole pursuant to this section, the prisoner shall resume serving the balance
133 of the sentence with credit given only for the duration of the prisoner's conditional medical
134 parole served in compliance with all reasonable conditions in this subsection. Revocation of a
135 prisoner's conditional medical parole due to a change in the prisoner's medical condition shall
136 not preclude a prisoner's eligibility for conditional medical parole in the future or for another
137 form of release permitted by law.

138 (f) A prisoner, commissioner or sheriff aggrieved by a decision denying conditional
139 medical parole made under this section may petition for relief in the superior court in the county
140 of the correctional facility where the prisoner resides or in Suffolk county for a de novo review
141 of the denial. The petition shall be filed not later than 30 days after receipt of notice of the
142 decision and shall be served on the parole board not later than 7 days after receipt of notice of the

143 decision. The parole board shall file its answer, which shall include a copy of its statement of
144 reasons, not later than 14 days after service of the complaint. The court may affirm the decision
145 of the board, remand the matter for further proceedings before the board or set aside a decision of
146 the board if it finds by a preponderance of the evidence that the prisoner is terminally ill or
147 permanently incapacitated. The court shall conduct an evidentiary hearing on the petition not
148 later than 21 days after filing of the answer and shall issue its decision not later than 14 days
149 after completion of the hearing unless the court orders otherwise upon a finding of good cause.

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

152 A decision by the court pursuant to this section shall be final, subject to appeal in the
153 manner provided for appeal of civil proceedings; provided, however, that the decision shall not
154 preclude a prisoner's eligibility for conditional medical parole in the future."

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

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

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

165 department who is receiving treatment for a permanent incapacitation, including the race and
166 ethnicity of the prisoner, the offense for which the prisoner was sentenced and a detailed
167 description of the prisoner's physical and mental condition; provided, however, that identifying
168 information shall be withheld from the report; (ii) the number of prisoners in the custody of the
169 department or the sheriffs who applied for conditional medical parole under subsections (c), (d),
170 and (e) and the race and ethnicity of each applicant; (iii) the number of prisoners who have been
171 granted conditional medical parole and the race and ethnicity of each prisoner granted release for
172 the prior fiscal year and total to date; (iv) the nature of the illness of the applicants for
173 conditional medical parole; (v) the counties to which the prisoners have been released; (vi) the
174 nature of the placement pursuant to the conditional medical parole plan; (vii) the categories of
175 reasons for denial for prisoners who have been denied conditional medical parole; (viii) the
176 number of prisoners petitioning for conditional medical parole on more than 1 occasion; (ix) the
177 number of prisoners released who have been returned to the custody of the department and the
178 reasons for those returns; and (x) the number of petitions for relief sought under subsection (f).

179 SECTION 2. The commissioner of correction and the secretary of public safety and
180 security shall promulgate rules and regulations necessary to implement section 119A of chapter
181 127 of the General Laws not later than 6 months after the effective date of this act.