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SENATE BILL

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO CRIMINAL JUSTICE REFORM; CREATING MEDICAL AND GERIATRIC PAROLE PROCEDURES; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 31-21-5 NMSA 1978 (being Laws 1978, Chapter 41, Section 1, as amended) is amended to read:

"31-21-5. DEFINITIONS.--As used in the Probation and Parole Act:

A. "probation" means the procedure under which an adult defendant, found guilty of a crime upon verdict or plea, is released by the court without imprisonment under a suspended or deferred sentence and subject to conditions;

B. "parole" means the release to the community of an inmate of an institution by decision of the board or by

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1 operation of law, subject to conditions imposed by the board
2 and to its supervision;

3 C. "institution" means the state penitentiary and
4 any other similar state institution hereinafter created;

5 D. "board" means the parole board;

6 E. "director" means the director of the [~~field~~
7 ~~services~~] adult probation and parole division of the
8 corrections department or any employee designated by [~~him~~] the
9 director; [~~and~~]

10 F. "adult" means any person convicted of a crime by
11 a district court;

12 G. "geriatric inmate" means a person who:

13 (1) is serving a sentence and is confined in a
14 prison or other correctional institution under the control of
15 the corrections department;

16 (2) is fifty-five years of age or older;

17 (3) suffers from a debilitating and chronic
18 infirmity, illness or disease related to aging; and

19 (4) does not constitute a danger to the
20 person's own self or to society at the time of review;

21 H. "permanently incapacitated inmate" means a
22 person who:

23 (1) is serving a sentence and is confined in a
24 prison or other correctional institution under the control of
25 the corrections department;

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1 (2) by reason of an existing medical condition
2 is permanently and irreversibly physically incapacitated; and

3 (3) does not constitute a danger to the
4 person's own self or to society at the time of review; and

5 I. "terminally ill inmate" means a person who:

6 (1) is serving a sentence and is confined in a
7 prison or other correctional institution under the control of
8 the corrections department;

9 (2) has an incurable condition caused by
10 illness or disease that will, within reasonable medical
11 judgment, produce death within six months; and

12 (3) does not constitute a danger to the
13 person's own self or to society at the time of review."

14 SECTION 2. Section 31-21-17.1 NMSA 1978 (being Laws 1994,
15 Chapter 21, Section 2) is amended to read:

16 "31-21-17.1. [~~ADMINISTRATION BY~~] MEDICAL OR GERIATRIC
17 PAROLE--PROCEDURES--DUTIES OF THE CORRECTIONS DEPARTMENT--
18 DUTIES OF THE BOARD.--

19 A. The corrections department shall promulgate
20 rules and implement a medical and geriatric parole program,
21 including the application form for medical or geriatric parole.

22 B. An inmate who is geriatric, permanently
23 incapacitated or terminally ill may seek parole consideration
24 upon written application to the board or consent to submission
25 of an application by and through a family member, attorney or

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1 corrections department care provider. When an inmate is
2 physically or mentally incapable of knowingly and voluntarily
3 consenting to submission of an application due to mental or
4 physical infirmity, a family member, attorney, corrections
5 department care provider or other individual with a power of
6 attorney may submit the application on the inmate's behalf.

7 C. The corrections department shall identify
8 geriatric, permanently incapacitated and terminally ill
9 inmates, notify those inmates of the opportunity to apply for
10 medical or geriatric parole and recommend the release of those
11 inmates who are eligible for [geriatric or] medical or
12 geriatric parole. [based on rules established by the board.
13 ~~The department shall forward an application and documentation~~
14 ~~in support of parole eligibility to the board within thirty~~
15 ~~days of receipt of an application from an inmate. The~~
16 ~~documentation shall include information concerning the inmate's~~
17 ~~age, medical history and prognosis, institutional behavior and~~
18 ~~adjustment and criminal history. The inmate or inmate's~~
19 ~~representative may submit an application to the board]~~

20 D. A classification officer shall provide an inmate
21 over the age of fifty-five with a copy of the medical and
22 geriatric parole policy and any other applicable forms at least
23 once a year. An inmate arriving at a long-term care or
24 geriatric unit managed by the corrections department or placed
25 by the corrections department into long-term care or a facility

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1 not managed by the department shall be provided with a copy of
2 the medical and geriatric parole policy, written in the
3 inmate's preferred language, during orientation. A copy of the
4 medical and geriatric parole policy shall be placed and
5 maintained in the law library at each institution of the
6 corrections department.

7 E. An application for medical or geriatric parole
8 shall be submitted to the inmate's classification officer. A
9 classification officer who receives an application shall review
10 the application, make a recommendation, attach any relevant
11 documentation and forward the application package to the
12 appropriate authority as defined by corrections department
13 rule.

14 F. The corrections department shall determine
15 whether to recommend an inmate for medical or geriatric parole
16 and make any recommendations to the board no later than thirty
17 days after receipt of the application by the classification
18 officer. All applications received by the department shall be
19 processed and forwarded to the board. The recommendation shall
20 include the inmate's age, medical history and prognosis and, if
21 applicable, institutional behavior, adjustment and any evidence
22 suggesting rehabilitation during incarceration. When the
23 department recommends an inmate for medical or geriatric
24 parole, the director shall submit a statement to the board that
25 the inmate's release is not incompatible with the welfare of

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1 society. In the event that the department is unable to make a
2 determination of recommendation for medical or geriatric parole
3 within thirty days, the department shall document in writing
4 any justification for the delay.

5 G. When considering an inmate for medical or
6 geriatric parole, the director may request that reasonable
7 medical and mental health examinations be conducted; provided
8 that the examinations do not cause delay in the processing time
9 of applications required by this section.

10 H. When determining an inmate's eligibility for
11 medical or geriatric parole, the director shall consider the
12 totality of the circumstances, including:

13 (1) the inmate's age;

14 (2) the severity of the inmate's illness,
15 disease or infirmity;

16 (3) a comprehensive health evaluation of the
17 inmate;

18 (4) the inmate's institutional behavior,
19 including evidence indicating rehabilitation;

20 (5) the inmate's current level of risk for
21 violence; and

22 (6) any alternative to maintaining the
23 geriatric, permanently incapacitated or terminally ill inmate
24 in a traditional setting.

25 I. Upon receipt of an application and

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1 recommendation and supporting documentation from the
2 corrections department for medical or geriatric parole, the
3 board shall review the documentation, schedule a hearing and
4 issue a decision within fifteen days. In the event that a
5 hearing cannot be scheduled and a decision issued within
6 fifteen days, the board shall document in writing any
7 justification for the delay. If an inmate is denied medical or
8 geriatric parole, the board shall notify the inmate and provide
9 service of the copy of the written decision. A copy of the
10 decision shall be sent to the secretary of corrections and the
11 warden of the facility in which the inmate resides.

12 J. The board shall release an inmate on medical or
13 geriatric parole upon recommendation from the director unless
14 the board finds by clear and convincing evidence that the
15 inmate's release is incompatible with the welfare of society
16 and states in writing its reason for the finding. The board
17 may consider the totality of the circumstances, including an
18 inmate's criminal history, but shall not deny medical or
19 geriatric parole solely because of the nature of the charge
20 resulting in the inmate's conviction or the inmate's criminal
21 history.

22 K. A rebuttable presumption that an inmate does not
23 constitute a danger to the inmate's self or to society and is
24 therefore eligible for medical or geriatric parole is
25 established if the inmate:

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1 (1) is fifty-five years of age or older and
2 suffers from a debilitating or chronic infirmity, illness or
3 disease related to aging;

4 (2) by reason of an existing medical
5 condition, is permanently and irreversibly physically
6 incapacitated; or

7 (3) has an incurable condition caused by
8 illness or disease that would, within reasonable medical
9 judgment, produce death within six months.

10 L. Pursuant to Section 39-3-1.1 NMSA 1978, an
11 inmate whose decision is denied by the board pursuant to the
12 provisions of this section may appeal the board's decision in
13 the district court in the jurisdiction where the sentence was
14 imposed. When an inmate is physically or mentally incapable of
15 knowingly and voluntarily consenting to submission of an appeal
16 because of a mental or physical infirmity, a family member,
17 attorney, corrections department health care provider or other
18 individual with a power of attorney may submit an appeal on the
19 inmate's behalf. The notice of appeal shall include a
20 statement of any applicable appellate issues. No later than
21 forty-eight hours after the filing of the notice of appeal with
22 the board, the board shall file the record on appeal with the
23 district court, including any applicable appellee response.
24 The district court shall rule on the appeal no later than
25 seventy-two hours after the record on appeal is filed.

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1 M. An inmate who has not served the inmate's
2 minimum sentence may be considered eligible for parole under
3 the medical and geriatric parole program. Medical and
4 geriatric parole shall be in addition to any other parole for
5 which a geriatric, permanently incapacitated or terminally ill
6 inmate may be eligible.

7 N. The parole term of a geriatric, permanently
8 incapacitated or terminally ill inmate on medical or geriatric
9 parole shall be for the remainder of the inmate's basic
10 sentence and parole without diminution of sentence for good
11 behavior.

12 O. In the event that the inmate is a terminally ill
13 inmate, the corrections department shall determine whether to
14 recommend an inmate for medical or geriatric parole within
15 fifteen days of the receipt of the inmate's application by the
16 classification officer, and the board shall issue a decision
17 within seven days. In the event that the department is unable
18 to determine whether to recommend an inmate for medical or
19 geriatric parole within fifteen days pursuant to this
20 subsection, the department or the board shall document any
21 justification for the delay in writing.

22 P. An inmate who has been denied parole pursuant to
23 the provisions of this section may reapply if additional
24 information is received or if the inmate's condition so
25 warrants.

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Q. An inmate convicted of first degree murder shall not be considered eligible for medical or geriatric parole."

SECTION 3. REPEAL.--Section 31-21-25.1 NMSA 1978 (being Laws 1994, Chapter 21, Section 3) is repealed.

SECTION 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2023.