SENATE BILL 114

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

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AN ACT

RELATING TO PAROLE; CREATING MEDICAL AND GERIATRIC PAROLE

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

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

D. "board" means the parole board;

E. "director" means the director of the adult probation and parole division of the corrections department or any employee designated by the director; [and]

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

G. "geriatric inmate" means a person who:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Inmates who are geriatric, permanently
incapacitated or terminally ill may seek parole consideration
upon written application to the board or consent to submission
of their application by and through a family member, attorney
or corrections department care provider. When an inmate is
physically or mentally incapable of knowingly and voluntarily
consenting to submission of an application due to mental or
physical infirmity, a family member, attorney, corrections
department care provider or other individual with a power of
attorney may submit the application on an inmate's behalf.

C. Applications for medical or geriatric parole
shall be submitted to the inmate's classification officer. A
classification officer who receives an application shall review
the application, make a recommendation, attach any relevant
documentation and forward the application package to the
appropriate authority as defined by corrections department
rule.

D. A classification officer shall provide an inmate
over the age of fifty-five with a copy of the medical and
geriatric parole policy and any other applicable forms at least
once a year. An inmate arriving at a long-term care or
geriatric unit managed by the corrections department or placed
by the corrections department into long-term care or a facility
not managed by the department shall be provided with a copy of
the medical and geriatric parole policy, written in the
inmate's preferred language, during orientation. A copy of the
medical and geriatric parole policy shall be placed and
maintained in the law library at each institution of the
corrections department.

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

F. The corrections department shall determine
whether to recommend an inmate for medical or geriatric parole
and make any recommendations to the board no later than thirty
days after receipt of the application by the classification
officer. All applications received by the department shall be
processed and forwarded to the board. The recommendation shall
include the inmate's age, medical history and prognosis and, if
applicable, institutional behavior, adjustment and any evidence
suggesting rehabilitation during incarceration. When the
department recommends an inmate for medical or geriatric
parole, the director shall submit a statement to the board that
the inmate's release is not incompatible with the welfare of
society. In the event that the department is unable to make a
determination of recommendation for medical or geriatric parole
within thirty days, the department shall document in writing
any justification for the delay.

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

   (1) is fifty-five years of age or older and

   (2) by reason of an existing medical

   (3) has an incurable condition caused by

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

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

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

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

(1) the inmate's age;
(2) the severity of the inmate's illness, disease or infirmity;
(3) a comprehensive health evaluation of the inmate;
(4) the inmate's institutional behavior, including evidence indicating rehabilitation;
(5) the inmate's current level of risk for violence; and
(6) any alternative to maintaining the geriatric, permanently incapacitated or terminally ill inmate in a traditional setting.

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

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

N. Upon receipt of an application and
recommendation and supporting documentation from the
corrections department for medical or geriatric parole, the
board shall review the documentation, schedule a hearing and
issue a decision within fifteen days. In the event that a
hearing cannot be scheduled and a decision issued within
fifteen days, the board shall document in writing any
justification for the delay. If an inmate is denied parole,
the board shall notify the inmate and provide service of the
copy of the written decision. A copy of the decision shall be
sent to the secretary of corrections and the warden of the
facility in which the inmate resides.

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

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

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

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

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