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SENATE BILL 29

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

Bill B. O'Neill

ENDORSED BY THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO PAROLE; 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
operation of law, subject to conditions imposed by the board

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1 and to its supervision;

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

4 D. "board" means the parole board;

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

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

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

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

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

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

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

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

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

25 (2) by reason of an existing medical condition

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1 is permanently and irreversibly physically incapacitated; and

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

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

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

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

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

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

15 "31-21-17.1. [~~ADMINISTRATION BY~~] MEDICAL OR GERIATRIC
16 PAROLE--PROCEDURES--DUTIES OF THE CORRECTIONS DEPARTMENT--
17 DUTIES OF THE BOARD.--

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

21 B. Inmates who are geriatric, permanently
22 incapacitated or terminally ill may seek parole consideration
23 upon written application to the board or consent to submission
24 of their application by and through a family member, attorney
25 or corrections department care provider. When an inmate is

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

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

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

25 E. The corrections department shall identify

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

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

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1 determination of recommendation for medical or geriatric parole
2 within thirty days, the department shall document in writing
3 any justification for the delay.

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

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

11 (2) by reason of an existing medical
12 condition, is permanently and irreversibly physically
13 incapacitated; or

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

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

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

25 J. When considering an inmate for medical or

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1 geriatric parole, the director may request that reasonable
2 medical and mental health examinations be conducted; provided
3 that the examinations do not cause delay in the processing time
4 of applications required by this section.

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

8 (1) the inmate's age;

9 (2) the severity of the inmate's illness,
10 disease or infirmity;

11 (3) a comprehensive health evaluation of the
12 inmate;

13 (4) the inmate's institutional behavior,
14 including evidence indicating rehabilitation;

15 (5) the inmate's current level of risk for
16 violence; and

17 (6) any alternative to maintaining the
18 geriatric, permanently incapacitated or terminally ill inmate
19 in a traditional setting.

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

25 M. The board shall release an inmate on medical or

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

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

22 O. In the event that the inmate is a terminally ill
23 inmate, the corrections department shall determine whether to
24 recommend an inmate for medical or geriatric parole within
25 fifteen days of the receipt of the inmate's application by the

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1 classification officer, and the board shall issue a decision
2 within seven days. In the event that the department is unable
3 to determine whether to recommend an inmate for medical or
4 geriatric parole within fifteen days pursuant to this
5 subsection, the department or the board shall document any
6 justification for the delay in writing.

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

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

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1 seventy-two hours after the record on appeal is filed."

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

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