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SENATE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

DISCUSSION DRAFT

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO PAROLE; REQUIRING THE DIRECTOR OF THE ADULT PROBATION AND PAROLE DIVISION OF THE CORRECTIONS DEPARTMENT TO IDENTIFY AND AUTHORIZE THE RELEASE OF ELIGIBLE INMATES ON MEDICAL OR GERIATRIC PAROLE; REQUIRING RULEMAKING; REQUIRING REPORTING; REPEALING SECTION 31-21-25.1 NMSA 1978 (BEING LAWS 1994, CHAPTER 21, SECTION 3).

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

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1 or deferred sentence and subject to conditions;

2 B. "parole" means the release to the community of
3 an inmate of an institution by decision of the board or by
4 operation of law, subject to conditions imposed by the board
5 and to its supervision;

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

8 D. "board" means the parole board;

9 E. "director" means the director of the field
10 services division of the corrections department or any employee
11 designated by him; ~~and~~

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

14 G. "geriatric inmate" means a male or female
15 offender who:

16 (1) is under sentence to or confined in a
17 prison or other correctional institution under the control of
18 the corrections department;

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

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

22 (4) does not constitute a danger to the
23 offender's own self or to society;

24 H. "permanently incapacitated inmate" means a male
25 or female offender who:

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

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

7 (3) does not constitute a danger to the
8 offender's own self or to society; and

9 I. "terminally ill inmate" means a male or female
10 offender who:

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

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

17 (3) does not constitute a danger to the
18 offender's own self or to society."

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

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

24 A. The corrections department, in collaboration
25 with the board, shall promulgate rules to govern and shall

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1 implement a "medical and geriatric parole program" by July 1,
2 2017.

3 B. The director shall identify geriatric,
4 permanently incapacitated and terminally ill inmates, consider
5 applications for medical or geriatric release and authorize the
6 release of those inmates who are eligible for medical or
7 geriatric [or medical] parole [based on rules established by
8 the board. The department shall forward], whose release is not
9 incompatible with the welfare of society and who were not
10 convicted of first degree murder.

11 C. An inmate who seeks release on medical or
12 geriatric parole, or the inmate's representative, shall submit
13 an application and documentation in support of parole
14 eligibility to the [board within thirty days of receipt of an
15 application from an inmate] director. The documentation
16 submitted in support of an application for medical or geriatric
17 parole shall include information concerning the inmate's age,
18 medical history and prognosis, institutional behavior and
19 adjustment and criminal history. [The inmate or inmate's
20 representative may submit an application to the board.]

21 D. Inmates who have not served their minimum
22 sentences may be considered eligible for parole under the
23 medical and geriatric parole program. Medical and geriatric
24 parole consideration shall be in addition to any other parole
25 for which a geriatric, permanently incapacitated or terminally

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1 ill inmate may be eligible.

2 E. When considering an inmate for medical or
3 geriatric parole, the director may request that certain medical
4 evidence be produced or that reasonable medical examinations be
5 conducted.

6 F. When determining an inmate's eligibility for
7 geriatric or medical parole, the director shall consider the
8 following criteria concerning the inmate:

9 (1) age;

10 (2) severity of illness, disease or
11 infirmities;

12 (3) comprehensive health evaluation;

13 (4) institutional behavior;

14 (5) level of risk for violence;

15 (6) criminal history; and

16 (7) alternatives to maintaining the geriatric,
17 permanently incapacitated or terminally ill inmate in
18 traditional settings.

19 G. The director shall review an application and
20 supporting documentation and, within thirty days of receipt of
21 the application, shall make a determination of the applicant's
22 eligibility for medical or geriatric parole. Within seventy-
23 two hours of making a determination that an inmate is eligible
24 for medical or geriatric parole, the director shall authorize
25 the board to release the inmate.

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1 H. The parole term of a geriatric, permanently
2 incapacitated or terminally ill inmate on medical or geriatric
3 parole shall be for the remainder of the inmate's sentence,
4 without diminution of sentence for good behavior.

5 I. The board shall:

6 (1) release an inmate on medical or geriatric
7 parole upon receipt of authorization from the director to
8 release the inmate;

9 (2) determine the appropriate level of
10 supervision following an inmate's release on medical or
11 geriatric parole and develop a comprehensive discharge plan for
12 those geriatric, permanently incapacitated and terminally ill
13 inmates; and

14 (3) at the time of an inmate's release on
15 medical or geriatric parole, prescribe terms and conditions of
16 the inmate's parole, including medical supervision and
17 intervals of periodic medical evaluations.

18 J. The director shall report annually to the
19 appropriate legislative interim committee the:

20 (1) number of applications for medical and
21 geriatric parole received by the director;

22 (2) nature of the illnesses, disease or
23 condition of the applicants;

24 (3) reason any application for medical or
25 geriatric parole was denied; and

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1 (4) number of persons on medical or geriatric
2 parole who have been returned to the custody of the department
3 and the reasons for their return."

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

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