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SENATE BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

DISCUSSION DRAFT

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~~] adult probation and parole division of the
11 corrections department or any employee designated by [~~him; and~~]
12 the director;

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

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

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

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

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

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

25 H. "permanently incapacitated inmate" means a male

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1 or female offender who:

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

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

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

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

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

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

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

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

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

25 A. The corrections department, in collaboration

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1 with the board, shall promulgate rules to govern and shall
2 implement a "medical and geriatric parole program" by July 1,
3 2019.

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

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

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

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1 for which a geriatric, permanently incapacitated or terminally
2 ill inmate may be eligible.

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

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

10 (1) age;

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

13 (3) comprehensive health evaluation;

14 (4) institutional behavior;

15 (5) level of risk for violence;

16 (6) criminal history; and

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

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

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1 the board to release the inmate.

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

6 I. The board shall:

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

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

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

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

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

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

25 (3) reason any application for medical or

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geriatric parole was denied; and
(4) number of persons on medical or geriatric
parole who have been returned to the custody of the corrections
department and the reasons for their return."

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