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SENATE BILL 116

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

INTRODUCED BY

Gerald Ortiz y Pino

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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