

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2370

with committee amendments

STATE OF NEW JERSEY

DATED: JULY 27, 2020

The Assembly Appropriations Committee reports favorably Assembly Bill No. 2370 with committee amendments.

As amended and reported by the committee, this bill establishes compassionate release for certain inmates and repeals the current medical parole law.

Under the amended bill, a court may release an inmate who qualifies for compassionate release at any time if the inmate is found to be suffering from: 1) a terminal condition, disease or syndrome; or 2) a permanent physical incapacity.

The amended bill defines “grave medical condition” to mean a prognosis that an inmate has more than six months but not more than 12 months to live or has a medical condition that did not exist at the time of sentencing and that for at least three months has required the inmate to receive 24-hour care. The bill defines “terminal condition, disease or syndrome” to mean a prognosis that the inmate has six months or less to live. Finally, the bill defines “permanent physical incapacity” to mean a prognosis that an inmate has a medical condition that did not exist at the time of sentencing and renders the inmate permanently unable to perform activities of basic daily living, requiring 24-hour care.

The amended bill provides that the Commissioner of Corrections is to establish a process for an inmate to obtain a diagnosis from two licensed physicians to determine whether the inmate is eligible for compassionate release. The diagnosis is required to include, but is not limited to:

- a description of the condition, disease or syndrome, or permanent physical incapacity;
- a prognosis concerning the likelihood of recovery, if appropriate;
- a description of the inmate’s physical incapacity; and
- a description of the type of ongoing treatment that would be required if the inmate is granted compassionate release.

Under the amended bill, in the event that a medical diagnosis determines that an inmate is suffering from a grave medical condition, the Department of Corrections is to promptly notify the inmate’s attorney or, if the inmate does not have an attorney, the

Public Defender, to initiate the process of petitioning for compassionate release. The petition cannot be filed until a subsequent medical diagnosis determines that the inmate is suffering from a terminal condition, disease or syndrome, or a permanent physical incapacity and the Department of Corrections issues to the inmate a Certificate of Eligibility for Compassionate Release.

The amended bill provides that if the inmate is diagnosed with a terminal condition, disease or syndrome, or permanent physical incapacity, the DOC is to provide the inmate and the inmate's attorney or public defender with a Certificate of Eligibility for Compassionate Release. The inmate may petition the Superior Court for compassionate release based on the certificate of eligibility.

In the event of a medical diagnosis that an inmate is suffering from a grave medical condition or upon issuance of a Certificate of Eligibility for Compassionate Release, the amended bill provides that an inmate may request representation from the Office of the Public Defender for the purpose of filing a petition for compassionate release.

Under the amended bill, the petition for compassionate release shall be filed with the Superior Court.

The amended bill provides that the petitioner is to serve a copy of the petition in accordance with the Rules of Court on the county prosecutor who prosecuted the matter or, if the matter was prosecuted by the Attorney General, the Attorney General.

Under the amended bill, the county prosecutor or the Attorney General, as the case may be, is to provide notice of the petition to any victim or member of the family of a victim entitled to notice relating to a parole or the consideration of a parole and is to notify the victim or family member of the opportunity to present a statement at the hearing on the petition or to testify to the court concerning any harm suffered by the victim or family member at the time of the hearing.

Upon receipt of notice of the petition, the amended bill provides that the victim or member of the family of the victim, as the case may be, may submit any comments to the court within 15 days following receipt of the petition.

Under the amended bill, the information contained in the petition and the contents of any comments submitted by a recipient in response thereto is to be confidential and is not to be disclosed to any person who is not authorized to receive or review the information or comments.

The amended bill provides that if a recipient of a notice of the petition does not submit comments or advise the court of an intent to testify at the hearing within the 15-day period following receipt of the notice of the petition, the court may presume that the recipient does not wish to submit comments and proceed with its consideration of the petition.

Under the amended bill, the prosecutor has 15 days to respond to the petition, which period may be extended to 30 days for good cause shown.

The amended bill provides that if the court receives from the prosecutor a response objecting to the petition or is notified that a victim or a family member intends to testify to the court at the hearing, the court is to hold a hearing on the petition on an expedited basis in accordance with the Rules of Court and procedures established by the Administrative Director of the Courts. If the court does not, within the time frames established under this subsection, receive a response from the prosecutor objecting to the petition and is not notified of an intent for a victim or family member to testify, the court may make a determination on the petition without holding a hearing.

Under the amended bill, the court may order the compassionate release of an inmate who has been issued a Certificate of Eligibility for Compassionate Release if the court finds by clear and convincing evidence that the inmate is so debilitated or incapacitated by the terminal condition, disease or syndrome, or permanent physical incapacity as to be permanently physically incapable of committing a crime if released and, in the case of a permanent physical incapacity, the conditions established under which the inmate would be released would not pose a threat to public safety.

The amended bill provides that no petition for compassionate release may be submitted to the court unless it is accompanied by a Certificate of Eligibility for Compassionate Release. The court may summarily dismiss a petition for compassionate release if the petition is submitted without a Certificate of Eligibility for Compassionate Release.

Under the amended bill, the court is to provide to the inmate and the county prosecutor or Attorney General, as the case may be, written notice of its decision setting forth the reasons for granting or denying compassionate release, and the county prosecutor or Attorney General, as the case may be, is to notify any victim or member of a victim's family who received notification of the outcome of the court's decision.

Whenever an inmate is granted compassionate release pursuant to this section, the amended bill provides that the court is to require, as a condition precedent to release, the State Parole Board to ensure that the inmate's release plan includes:

- identification of a community sponsor;
- verification of the availability of appropriate medical services sufficient to meet the treatment requirements identified; and
- verification of appropriate housing which may include, but need not be limited to, a hospital, hospice, nursing home facility, or other housing accommodation suitable to the

inmate's medical condition, disease or syndrome, or permanent physical incapacity.

Under the amended bill, the Commissioner of Corrections is to ensure that any inmate who petitions for compassionate release is provided an opportunity to apply, and is provided necessary assistance to complete the application, for medical assistance benefits under the Medicaid program, prior to any determination of ineligibility by the court as a result of the inability to verify the availability of appropriate medical services.

If, after review of a medical diagnosis, the State Parole Board determines that a parolee granted compassionate release is no longer so debilitated or incapacitated by a terminal condition, disease or syndrome, or by a permanent physical incapacity as to be physically incapable of committing a crime or, in the case of a permanent physical incapacity, the parolee poses a threat to public safety, the amended bill provides that the State Parole Board is to notify the prosecutor, who may initiate proceedings to return the inmate to confinement in an appropriate facility designated by the Commissioner of Corrections.

The amended bill requires the prosecutor to provide notice of the request to return the parolee to confinement to the parolee and the parolee's attorney or, if the parolee does not have an attorney, the Public Defender. The parolee is to have 15 days after receipt of the notice to object to the return to confinement, which period may be extended to 30 days for good cause shown. If the Superior Court receives from the parolee an objection to the request to return the parolee to confinement, the court is to hold a hearing on an expedited basis to determine whether the parolee should be returned to confinement pursuant to this bill. If the court does not receive a timely objection, the court may make a determination on the request without holding a hearing. The parolee is to be returned to confinement if the court finds, by a preponderance of the evidence, that the parolee is no longer so debilitated or incapacitated by a terminal condition, disease or syndrome, or by a permanent physical incapacity, the parolee poses a threat to public safety.

COMMITTEE AMENDMENTS

The committee amended the bill to:

(1) provide that only an inmate who receives a Certificate of Eligibility for Compassionate Release may petition the court for compassionate release;

(2) provide that an inmate diagnosed with a grave medical condition is ineligible to file a petition for compassionate release until a subsequent medical diagnosis determines that the inmate is suffering from a terminal condition, disease or syndrome, or a permanent physical incapacity;

(3) provide that the petitioner is to serve a copy of the petition on the prosecutor;

(4) provide that, upon receipt of notice of the petition, the victim or member of the family of the victim, has 15 days to advise the court of an intent to testify at the hearing;

(5) provide that the period for the prosecutor to respond to the petition may be extended to 30 days for good cause shown;

(6) provide that if the court receives a response from the prosecutor objecting to the petition or is notified that a victim or family member intends to testify, the court is to hold a hearing on an expedited basis in accordance with the Rules of Court and procedures established by the Administrative Director of the Courts;

(7) provide that if the court does not receive a response from the prosecutor or victim or family member, the court may make a determination on the petition without holding a hearing;

(8) provide that a petition for compassionate release may only be submitted to the court if it is accompanied by a Certificate of Eligibility;

(9) provide that the prosecutor is to notify any victim or family member of the victim who received notice of the outcome of the court's decision;

(10) require the prosecutor or Attorney General to provide notice of the petition, rather than a copy of the petition, to any victim or family member who is entitled to notice;

(11) require the State Parole Board to provide notice to the prosecutor of any changes in the inmate's medical condition and a copy of the relevant medical diagnosis;

(12) require the prosecutor is provide notice of the request to return the parolee to confinement to the parolee and the parolee's attorney or public defender;

(13) provide that the parolee is to have 15 days to respond after receipt of notice of a request to return the parolee to confinement, which may be extended to 30 days for good cause shown;

(14) provide that the court is to hold a hearing on an expedited basis if it receives an objection to the request to return the parolee to confinement from the parolee or, if the court does not receive an objection, it may make a determination without holding a hearing;

(15) establish that the court is to return a parolee to confinement if it finds by a preponderance of the evidence that the parolee is no longer so debilitated or incapacitated as to not pose a threat to public safety;

(16) provide that the Public Defender has the duty to provide for the legal representation of any eligible inmate who is serving a custodial prison sentence and requests assistance in petitioning the Superior Court for compassionate release in accordance with the provisions of the amended bill; and

(17) provide that, in addition to the Commissioner of Corrections, the State Parole Board and the Administrative Director of the Courts may take such anticipatory action prior to the effective date necessary to effectuate the provisions of this bill.

FISCAL IMPACT:

The Office of Legislative Services (OLS) concludes that the enactment of this bill will result in nominal cost savings to the State. The OLS lacks sufficient information to quantify the fiscal impact as there is no way to accurately project the number of inmates likely to suffer from a grave medical condition, terminal illness, or permanent physical incapacity so as to qualify for compassionate release in any given year. Overall, the savings, if any, are likely to be marginal due to a small number of inmates qualifying for compassionate release.

For every inmate qualifying for compassionate release with a prognosis of six to twelve months to live or a permanent physical incapacity, the Department of Corrections (DOC) would realize a modest reduction in expenditures. DOC data indicate that the marginal cost per day to provide inmates with food, wages, and clothing totals approximately \$8.60 per inmate. By releasing inmates six to twelve months prior to the end of their sentence, the bill would decrease department expenditures by approximately \$1,548 to \$3,096 per inmate. According to the DOC, on average there are forty deaths per year in State prisons. However, the DOC is unable to determine whether the deaths are due to any terminal condition. The DOC notes that very few patients are ever released before their death due to diseases such as terminal cancer, hepatic failure, end stage cardiac disease, end stage lung disease, AIDS, etc.

This bill repeals the medical parole law and therefore the State Parole Board (SPB) is likely to see a nominal reduction in annual expenditures due to a reduction in the number of inmates on parole. Under current law, a decision concerning the medical parole of an inmate is conducted by the parole board. Under the provisions of this bill, compassionate release will require the courts to decide on the release of qualified inmates. However, the SPB will be required to create a release plan for inmates granted compassionate release.

The Office of Public Defender would have to represent additional low-income defendants for the purposes of filing a petition for compassionate release and hence likely to incur an increase in caseload and expenditures. The State Judiciary may also incur an indeterminate nominal increase in operating expenditures due to increased caseload.