

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 2594

STATE OF NEW JERSEY
219th LEGISLATURE

DATED: AUGUST 31, 2020

SUMMARY

- Synopsis:** Establishes compassionate release program for certain inmates; repeals law that establishes medical parole.
- Type of Impact:** Indeterminate Net Impact to the State.
- Agencies Affected:** Department of Corrections; State Parole Board; The Judiciary; Office of the Public Defender.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Expenditures	Indeterminate Net Impact

- The Office of Legislative Services (OLS) estimates that the enactment of this bill may result in cost savings to the Department of Corrections (DOC) and the State Parole Board (SPB), and an increase in costs incurred by the Judiciary and the Office of the Public Defender. The OLS cannot determine the net effect 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 terminal illness or permanent physical incapacity so as to qualify for compassionate release in any given year.
- For every inmate qualifying for compassionate release with a prognosis of six to twelve months to live or a permanent physical incapacity, the 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 40 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 a terminal disease.

- This bill repeals the medical parole law, and therefore the 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 Judiciary may also incur an indeterminate nominal increase in operating expenditures due to increased caseload.

BILL DESCRIPTION

This bill establishes compassionate release for certain inmates and repeals the current medical parole law.

Under the 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 grave medical condition; 2) a terminal condition, disease or syndrome; or 3) a permanent physical incapacity.

The 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 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 him or her permanently unable to perform activities of basic daily living, requiring 24-hour care.

The bill provides that the DOC is to establish a process for an inmate to obtain a diagnosis from two licensed physicians to determine whether he or she is eligible for compassionate release.

If the inmate is diagnosed with a grave medical condition, the inmate’s attorney or public defender may initiate the process of petitioning for compassionate release. 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.

If an inmate is granted compassionate release under the bill, the court is required to ensure that the parole board has created a release plan that includes: 1) identification of a community sponsor; 2) verification of the availability of appropriate medical services sufficient to meet the inmate’s treatment needs; and 3) verification of appropriate housing.

Finally, this bill repeals the current medical parole law. Under current law, an inmate suffering from a terminal condition or permanent physical incapacity may be eligible for medical parole, with the exception of inmates serving a sentence for certain crimes. Under current law, a decision concerning the medical parole of an inmate is conducted by the parole board.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The OLS has not received a formal fiscal note on this bill. However, upon request, the DOC has indicated to the OLS that the bill may not have a significant fiscal impact as “very few patients are ever released before their death from their disease process (i.e., terminal cancer, hepatic failure, end stage cardiac disease, end stage lung disease, AIDS, etc.).” Furthermore, the DOC points out that not all patients referred to medical parole are approved due to the requirement of terminal diagnosis of less than six months to live and a permanent physical disability demonstrated by total need for skilled nursing care. These conditions have to be met for the consideration of compassionate release as well. According to the DOC, on average there are 40 deaths per year in State prisons. However, the DOC is unable to determine whether the deaths are due to any terminal condition.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the enactment of this bill may result in cost savings to the DOC and the SPB, and an increase in costs incurred by the Judiciary and the Office of the Public Defender. The OLS cannot determine the net effect to the State.

For every inmate qualifying for compassionate release with a prognosis of six to twelve months to live or a permanent physical incapacity, the DOC would realize a modest reduction in expenditures. The DOC previously indicated to the OLS that the average annual cost to house an inmate in a State prison facility totaled \$50,590 in FY 2019. However, this amount would not accrue as State cost savings for each individual released unless the prison population declined by a number large enough for the DOC to lower bed space capacity, thereby reducing its fixed costs. The department informed the OLS that if a single inmate had been diverted from State prison in FY 2019 without decreasing the number of bed spaces, the department would not have incurred marginal costs for food, wages, and clothing of \$8.74 per day, or \$3,190 for the fiscal year. According to the DOC, on average there are 40 deaths per year in State facilities. However, the DOC is unable to determine whether the deaths were due to any terminal condition. The DOC notes that very few patients are ever released before their death from their disease process (i.e., terminal cancer, hepatic failure, end stage cardiac disease, end stage lung disease, AIDS, etc.).

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 Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).