

# SENATE . . . . . No. 1599

---

## The Commonwealth of Massachusetts

PRESENTED BY:

***Patricia D. Jehlen***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to remove barriers to medical parole.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>3/5/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>3/19/2021</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>9/22/2021</i>

# SENATE . . . . . No. 1599

---

By Ms. Jehlen, a petition (accompanied by bill, Senate, No. 1599) of Patricia D. Jehlen, Joanne M. Comerford and Lindsay N. Sabadosa for legislation to remove barriers to medical parole. Public Safety and Homeland Security.

---

## The Commonwealth of Massachusetts

\_\_\_\_\_  
In the One Hundred and Ninety-Second General Court  
(2021-2022)  
\_\_\_\_\_

An Act to remove barriers to medical parole.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Section 119A of Chapter 127, as appearing in 2018 Official Edition, is  
2 hereby amended by striking out, in lines 17-18, the words “and that is so debilitating that the  
3 prisoner does not pose a public safety risk”

4           SECTION 2. Said section 119A of Chapter 127, is hereby amended by inserting, after the  
5 word “risk” in line 19, the following new definition:-

6           “Surrogate decision-maker”, a person chosen by an incarcerated person to advocate on  
7 their behalf. Such a surrogate may include next-of-kin, close family member, attorney, health  
8 care proxy, or an individual with power of attorney for the incarcerated person

9           SECTION 3. Said section 119A of Chapter 127, is hereby amended by striking out, in  
10 lines 24-25, the words “and that is so debilitating that the prisoner does not pose a public safety  
11 risk”

SECTION 4. Said section 119A of Chapter 127, is hereby amended in subsection (c)(1), by inserting, in line 42, after the word “society” the following:-

“Such assessment shall be supported, if requested by the petitioner, by 72-hours of routine video surveillance of the prisoner from the prison, demonstrating the prisoner’s level of incapacity.”

SECTION 5. Said section 119A of Chapter 127, is hereby amended by inserting, after subsection (c)(1), the following new subsections:-

“(c)(2) The Department shall submit written petitions on behalf of permanently cognitively incapacitated prisoners eligible for medical parole. The Department must first contact the prisoner’s next of kin, surrogate decision-maker, attorney or Prisoners’ Legal Services, and notify them of the opportunity to file a petition in lieu of the Department or to submit a written statement. The Department’s obligation to submit written petitions on behalf of cognitively incapacitated prisoners does not preclude other appropriate parties from filing written petitions on behalf of incarcerated persons with cognitive incapacitation. Such parties shall have access to all records necessary to file the petition and the appointment of a guardian shall not be required.

(c)(3) A Prisoner for whom the department cannot identify appropriate post-release placement shall be referred to the Department of Public Health (“DPH”) for placement in an appropriate DPH facility pursuant to section 151 of chapter 127.

(c)(4) The Department shall identify prisoners who are permanently cognitively or physically incapacitated or terminally ill through the initial physical exam and periodic exams thereafter and shall report all identified cases on a quarterly basis to an appropriate prisoners’ rights legal organization, which will include the prisoner’s name, the prisoner’s next-of-kin or

34 surrogate decision-maker, information about the prisoner's sentence, and the relevant condition  
35 or description of the incapacitation. In addition to the periodic assessments by medical personnel  
36 at the prison, the prisoner, or the prisoner's family or attorney may request at any time that the  
37 prisoner's primary care physician in the prison assess whether the prisoner is permanently  
38 incapacitated or terminally ill."

39 SECTION 6. Said section 119A of Chapter 127, is hereby amended in subsection (d)(1),  
40 by inserting, in line 65, after the word "society" the following:-

41 "Such assessment shall be supported, if requested by the petitioner, by 72-hours of  
42 routine video surveillance of the prisoner from the prison, demonstrating the prisoner's level of  
43 incapacity."

44 SECTION 7. Said section 119A of Chapter 127, is hereby amended by inserting, after  
45 subsection (D)(1), the following new subsections:-

46 "(d)(2) The sheriff shall submit written petitions on behalf of permanently cognitively  
47 incapacitated prisoners eligible for medical parole. The Sheriff must contact the prisoner's next  
48 of kin, surrogate decision-maker, attorney or Prisoners' Legal Services, and notify them of the  
49 opportunity to file a petition in lieu of the Sheriff or to submit a written statement. The Sheriff's  
50 obligation to submit written petitions on behalf of cognitively incapacitated prisoners does not  
51 preclude other appropriate parties from filing written petitions on behalf of incarcerated persons  
52 with cognitive incapacitation. Such parties shall have access to all records necessary to file the  
53 petition and the appointment of a guardian shall not be required.

(d)(3) A prisoner for whom the sheriff cannot identify appropriate post-release placement shall be referred to the Department of Public Health (“DPH”) for placement in an appropriate DPH facility pursuant to section 151 of chapter 127.

(d)(4) The sheriff shall identify prisoners who are permanently cognitively or physically incapacitated or terminally ill through the initial physical exam and periodic exams thereafter and shall report all identified cases on a quarterly basis to an appropriate prisoners’ rights legal organization, which will include the prisoner’s name, the prisoner’s next-of-kin or surrogate decision-maker, information about the prisoner’s sentence, and the relevant condition or description of the incapacitation. In addition to the periodic assessments by medical personnel at the prison, the prisoner, or the prisoner’s family or attorney may request at any time that the prisoner’s primary care physician in the prison assess whether the prisoner is permanently incapacitated or terminally ill.”

SECTION 8. Said section 119A of Chapter 127, is hereby amended in subsection (e), by inserting, in line 84, after the word “expired” the following:-

“The assessment of terminal illness or permanent incapacitation by a medical provider shall be separate from the public safety risk assessment. Any denial of someone determined by the provider to meet the definition of terminally ill or permanently incapacitated shall discuss the threat to the welfare of society in the context of the petitioner’s current medical conditions.”

SECTION 9. Said section 119A of Chapter 127, is hereby amended by striking out subsection (f) in its entirety and replacing it with the following new subsection:

“(f) For all purposes, including revocation, a prisoner granted release under this section shall be under the jurisdiction, supervision and control of the parole board, as if the prisoner had

76 been paroled pursuant to section 130 of chapter 127. The parole board may revise, alter or amend  
77 the terms and conditions of a medical parole at any time. Upon discovery that the parolee's  
78 medical condition has improved to the extent that the parolee may no longer be eligible for  
79 medical parole under this section, the commissioner shall hold a hearing to determine whether  
80 the medical parolee remains qualified for medical parole. The department must produce  
81 evidence, including a current medical assessment, to demonstrate that the parolee is no longer  
82 eligible for medical parole. If a parole officer receives credible information that a medical  
83 parolee has failed to comply with a condition of release pursuant to subsection (e), the Parole  
84 Board may move to revoke medical parole pursuant to 120 CMR 303.00 et seq., ("Revocation of  
85 Parole"). If medical parole is revoked, the prisoner shall resume serving the balance of the  
86 sentence with credit given only for the duration of the prisoner's medical parole that was served  
87 in compliance with all conditions of their medical parole pursuant to subsection (e). Revocation  
88 of a prisoner's medical parole due to a change in the prisoner's medical condition shall not  
89 preclude a prisoner's eligibility for medical parole in the future or for another form of release  
90 permitted by law."

91 SECTION 10. Said section 119A of Chapter 127, is hereby amended in subsection (g), by  
92 inserting, in line 117, after the figure "249" the following:-

93 "Petitions for certiorari shall be handled by the judiciary with due haste considering the  
94 urgent nature of medical parole."