HOUSE DOCKET, NO. 2678 FILED ON: 1/16/2025

HOUSE . . . . . No. 2604

The Commonwealth of Massachusetts

PRESENTED BY:

Mindy Domb

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 ensure access to medical parole.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Mindy Domb	*3rd Hampshire*	*1/16/2025*
Patricia D. Jehlen	*Second Middlesex*	*3/26/2025*

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HOUSE . . . . . No. 2604

By Representative Domb of Amherst, a petition (accompanied by bill, House, No. 2604) of Mindy Domb relative to access to medical parole. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Fourth General Court
(2025-2026)

An Act to ensure access 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:

SECTION 1. Section 119A of Chapter 127 of the General Laws, as so appearing, is hereby amended by striking out the definitions of “Permanent incapacitation” and “Terminal illness” in subsection (a) and replacing with the following:

"Permanent incapacitation", a medical determination of a physical or cognitive incapacitation that appears irreversible, as determined by a licensed physician.

"Terminal illness", a medical determination of a condition that appears incurable, as determined by a licensed physician, that is reasonably likely to cause the death of the prisoner in not more than 18 months.

SECTION 2. Section 119A is further amended by striking clauses (i) through (iii) of paragraph (1) of subsection (c) and inserting the following:

The superintendent of a correctional facility shall consider a prisoner for medical parole upon a written petition filed with the superintendent and the Commissioner by the prisoner, the

prisoner's advocate, the prisoner's next of kin, a medical provider of the correctional facility or a member of the department's staff. The superintendent shall review the petition and develop a recommendation as to the release of the prisoner. Whether or not the superintendent recommends in favor of medical parole, the superintendent shall, not more than 21 days after the receipt of the petition, transmit the recommendation to the commissioner. (i) a proposed medical parole plan; (ii) a written diagnosis by a physician licensed to practice medicine under section 2 of chapter 112; and (iii) an assessment of the current risk for violence that the prisoner poses to society. The risk assessment shall be based on a consideration of the prisoner's current cognitive and physical ability to violently recidivate, considering the probability that violence will actually occur, in light of the person's documented current medical condition. Where the person's disability-related behaviors contribute to current risk, the department shall also consider whether reasonable accommodations in a community setting could mitigate risk. Such assessment shall be supported, if requested by the petitioner, by 24 continuous hours of video surveillance of the prisoner, demonstrating the prisoner's level of incapacity.

SECTION 3. Section 119A is further amended by striking paragraph (2) of subsection (c) and inserting the following paragraphs:

(c)(2) The department shall, and all other parties may, submit written petitions on behalf of permanently cognitively incapacitated prisoners. The department shall first contact the prisoner's next of kin, advocate, or Prisoners' Legal Services, and notify them of the opportunity to file a petition in lieu of the department. The department shall accept release of information forms signed by the prisoner if no guardian has been appointed.

(c)(3) The department shall ensure that all prisoners aged 55 and older shall be assessed for cognitive decline at least annually by a qualified medical provider administering a standardized cognitive assessment tool in their preferred language. Any cognitive assessment shall, at the prisoner's request, include a collateral interview with the persons who most closely interact with the prisoner, including prisoner companions. This collateral interview shall be documented in the prisoner's medical record. Prisoners who are terminally ill, permanently incapacitated, or whose cognitive assessment score falls within a range indicating "moderate" or "severe" cognitive decline shall be referred to Prisoners' Legal Services and the prisoners' next of kin. The prisoner, or the prisoner's family or advocate may request additional assessments at any time by a qualified medical provider.

(c)(4) Upon the commissioner's receipt of the recommendation pursuant to paragraph (c)(1), the commissioner shall notify, in writing, the district attorney for the jurisdiction where the offense resulting in the prisoner being committed to the correctional facility occurred, the prisoner, the person who petitioned for medical parole, if not the prisoner and, if applicable under chapter 258B, the victim or the victim's family that the prisoner is being considered for medical parole. The parties who receive the notice shall have an opportunity to submit written statements; provided, however, that if the prisoner was convicted and is serving a sentence under section 1 of chapter 265, the district attorney or victim's family may request a hearing.

Where the prisoner meets the medical criteria for medical parole, the department shall submit a medical parole plan meeting the prisoner's needs to the Parole Board no later than 35 days after the department's receipt of the petition. Where a medical parole plan to a private home that can be made appropriate to the person's care is available, that home shall be the proposed

plan unless the department produces documentation of specific reasons the home placement would cause a risk to public safety.

SECTION 4. Section 119A is further amended by striking subsection (d) and replacing with the following subsections:

(d)(1) A sheriff shall consider a prisoner for medical parole upon a written petition filed with the sheriff and the commissioner by the prisoner, the prisoner's advocate, the prisoner's next of kin, a medical provider of the house of correction or jail or a member of the sheriff's staff. The sheriff shall review the petition and develop a recommendation as to the release of the prisoner. Whether or not the sheriff recommends in favor of medical parole, the sheriff shall, not more than 21 days after receipt of the petition, transmit the recommendation to the commissioner. The sheriff shall transmit with the petition: (i) a proposed medical parole plan; (ii) a written diagnosis by a physician licensed to practice medicine under section 2 of chapter 112; and (iii) an assessment of the current risk for violence that the prisoner poses to society. The risk assessment shall be based on a consideration of the prisoner’s current cognitive and physical ability to violently recidivate, considering the probability that violence will actually occur, in light of the person’s documented current medical condition. Where the person’s disability-related behaviors contribute to current risk, the sheriff shall also consider whether reasonable accommodations in a community setting could mitigate risk. Such assessment shall be supported, if requested by the petitioner, by 24 continuous hours of video surveillance of the prisoner, demonstrating the prisoner’s level of incapacity.

(d)(2) The sheriff shall, and all other parties may, submit written petitions on behalf of permanently cognitively incapacitated prisoners. The sheriff shall first contact the prisoner’s next

of kin, advocate, or Prisoners' Legal Services, and notify them of the opportunity to file a petition in lieu of the sheriff. The sheriff shall accept release of information forms signed by the prisoner if no guardian has been appointed.

(d)(3) The sheriff shall ensure that all prisoners aged 55 and older shall be assessed for cognitive decline at least annually by a qualified medical provider administering a standardized cognitive assessment tool in their preferred language. Any cognitive assessment shall, at the prisoner's request, include a collateral interview with the persons who most closely interact with the prisoner, including prisoner companions. This collateral interview shall be documented in the prisoner's medical record. Prisoners who are terminally ill, permanently incapacitated, or whose cognitive assessment score falls within a range indicating "moderate" or "severe" cognitive decline shall be referred to Prisoners' Legal Services and the prisoners' next of kin. The prisoner, or the prisoner's family or advocate may request additional assessments at any time by a qualified medical provider.

(d)(4) Upon the commissioner's receipt of the recommendation pursuant to paragraph (d)(1), the commissioner shall notify, in writing, the district attorney for the jurisdiction where the offense resulting in the prisoner being committed to the correctional facility occurred, the prisoner, the person who petitioned for medical parole, if not the prisoner and, if applicable under chapter 258B, the victim or the victim's family that the prisoner is being considered for medical parole. The parties who receive the notice shall have an opportunity to submit written statements.

Where the prisoner meets the medical criteria for medical parole, the department shall submit a medical parole plan meeting the prisoner's needs to the Parole Board no later than 35

days after the sheriff's receipt of the petition. Where a medical parole plan to a private home that can be made appropriate to the parolee's care is available, that home shall be the proposed plan unless the department produces documentation of specific reasons the home placement would cause a risk to public safety.

SECTION 5. Section 119A is further amended by striking subsection (e) and replacing with the following:

(e) The commissioner shall issue a written decision not later than 45 days after the department's receipt of a petition, which shall be accompanied by a statement of reasons for the commissioner's decision that addresses all of the record evidence. The department shall also establish a policy implementing a further expedited process for decision and release of a person on medical parole whose death by terminal illness is found to be likely in less than 6 months. Medical parole shall be granted to a terminally ill or permanently incapacitated prisoner unless the Commissioner determines by clear and convincing evidence that, if the prisoner is released with appropriate conditions, community supervision, and reasonable accommodations, the prisoner will not live and remain at liberty without violently recidivating. The assessment of terminal illness or permanent incapacitation by a medical provider shall be separate from the public safety risk assessment. Any denial of medical parole shall include a written explanation of the clear and convincing evidence relied upon to determine that the prisoner would not remain at liberty without violently recidivating. No petition shall be denied on medical grounds without a current, in-person evaluation of the prisoner by the licensed physician who is opining that the person is not medically eligible. Petitioners shall have a right to funds for experts pursuant to chapter 261. The parole board shall impose terms and conditions for medical parole that shall

apply through the date upon which the prisoner's sentence would have expired and which shall be no more restrictive than the parolee’s current medical condition necessitates.

All decisions to grant or deny medical parole, and the creation of a medical parole plan shall be made without bias pertaining to a person’s race, ethnicity, disability, religion, sexual orientation, or gender identity.

Release after a grant of medical parole shall occur within 7 days of the grant, absent documented extraordinary circumstances preventing such timely release. 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. Not less than 24 hours before the date of a prisoner's release on medical parole, the commissioner shall notify, in writing, the district attorney for the jurisdiction where the offense resulting in the prisoner being committed to the correctional facility occurred, the department of state police, the police department in the city or town in which the prisoner shall reside and, if applicable under chapter 258B, the victim or the victim's family of the prisoner's release and the terms and conditions of the release.

SECTION 6. Section 119A is further amended by striking subsection (f) and replacing with the following:

(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 been paroled pursuant to section 130 of chapter 127. The parole board may revise, alter or amend the terms and conditions of a medical parole at any time.

If a parole officer receives credible information that the individual's terminal illness or permanent incapacitation has reversed to the extent that the individual would no longer be eligible for medical parole under this section, the board shall obtain a medical assessment by a licensed physician of the individual's current medical condition. If the medical assessment concludes that the individual has reversed to the extent that they no longer qualify for medical parole, the parole officer shall bring the individual before the board for a parole revocation hearing. The individual shall remain at liberty during the pendency of the revocation proceedings, barring a substantial and immediate risk to public safety.

If the board establishes at the parole hearing that the terminal illness or permanent incapacitation has reversed to the extent that the individual is no longer eligible for medical parole pursuant to this section, the board shall order the return of the individual to incarceration, or, subject to appropriate terms and conditions set by the board, order his release to parole supervision under another form of parole permitted by law. If the board orders revocation and reincarceration pursuant to this subsection, the individual shall return to custody in accordance with the terms of their original sentence with credit given only for the duration of the prisoner's medical parole that was served in compliance with all conditions of their medical parole pursuant to subsection (e).

Revocation of an individual's medical parole for any reason shall not preclude their eligibility for medical parole in the future or for another form of release permitted by law.

SECTION 7. Section 119A is further amended by striking the first sentence of subsection (g) and replacing with the following two sentences:

A reviewing court may affirm or reverse the commissioner's decision and grant or deny the prisoner's release. Petitions for certiorari shall be handled by the judiciary with due haste considering the urgent nature of medical parole.

SECTION 8. Section 119A is further amended by striking the word "fiscal" from the first sentence of subsection (f).

SECTION 9. Section 119A is further amended by striking clauses (i) through (v) of subsection (i) and replacing with the following:

(i) the number of prisoners in the custody of the department or of the sheriffs who applied for medical parole under this section and the race, ethnicity, gender, and age of each applicant at the time of the petition; (ii) the number of prisoners who have been granted medical parole and the race, ethnicity, gender, and age of each prisoner at the time of the petition; (iii) the nature of the illness of the applicants for medical parole; (iv) the counties to which the prisoners have been released; (v) the number of prisoners who have been denied medical parole, the reason for the denial and the race, ethnicity, gender, and age of each prisoner at the time of the petition;