

SENATE No. 1707

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 ensure access to medical parole.

PETITION OF:

NAME:

Patricia D. Jehlen

DISTRICT/ADDRESS:

Second Middlesex

SENATE No. 1707

By Ms. Jehlen, a petition (accompanied by bill, Senate, No. 1707) of Patricia D. Jehlen for legislation to remove barriers to medical parole. Public Safety and Homeland Security.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1535 OF 2023-2024.]

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:

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

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

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

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

11 The superintendent of a correctional facility shall consider a prisoner for medical parole
12 upon a written petition filed with the superintendent and the Commissioner by the prisoner, the
13 prisoner's advocate, the prisoner's next of kin, a medical provider of the correctional facility or a
14 member of the department's staff. The superintendent shall review the petition and develop a
15 recommendation as to the release of the prisoner. Whether or not the superintendent recommends
16 in favor of medical parole, the superintendent shall, not more than 21 days after the receipt of the
17 petition, transmit the recommendation to the commissioner. (i) a proposed medical parole plan;
18 (ii) a written diagnosis by a physician licensed to practice medicine under section 2 of chapter
19 112; and (iii) an assessment of the current risk for violence that the prisoner poses to society. The
20 risk assessment shall be based on a consideration of the prisoner's current cognitive and physical
21 ability to violently recidivate, considering the probability that violence will actually occur, in
22 light of the person's documented current medical condition. Where the person's disability-related
23 behaviors contribute to current risk, the department shall also consider whether reasonable
24 accommodations in a community setting could mitigate risk. Such assessment shall be supported,
25 if requested by the petitioner, by 24 continuous hours of video surveillance of the prisoner,
26 demonstrating the prisoner's level of incapacity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

127 Release after a grant of medical parole shall occur within 7 days of the grant, absent
128 documented extraordinary circumstances preventing such timely release. A prisoner for whom
129 the department cannot identify appropriate post-release placement shall be referred to the
130 Department of Public Health ("DPH") for placement in an appropriate DPH facility pursuant to
131 section 151 of chapter 127. Not less than 24 hours before the date of a prisoner's release on
132 medical parole, the commissioner shall notify, in writing, the district attorney for the jurisdiction
133 where the offense resulting in the prisoner being committed to the correctional facility occurred,
134 the department of state police, the police department in the city or town in which the prisoner
135 shall reside and, if applicable under chapter 258B, the victim or the victim's family of the
136 prisoner's release and the terms and conditions of the release.

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

139 (f) For all purposes, including revocation, a prisoner granted release under this section
140 shall be under the jurisdiction, supervision and control of the parole board, as if the prisoner had
141 been paroled pursuant to section 130 of chapter 127. The parole board may revise, alter or amend
142 the terms and conditions of a medical parole at any time.

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

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

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

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

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

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

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

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

178 Where the prisoner meets the medical criteria for medical parole, the department shall
179 submit a medical parole plan meeting the prisoner’s needs to the Parole Board no later than 35
180 days after the sheriff’s receipt of the petition. Where a medical parole plan to a private home that
181 can be made appropriate to the parolee’s care is available, that home shall be the proposed plan
182 unless the department produces documentation of specific reasons the home placement would
183 cause a risk to public safety.

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188 commissioner's decision that addresses all of the record evidence. The department shall also
189 establish a policy implementing a further expedited process for decision and release of a person
190 on medical parole whose death by terminal illness is found to be likely in less than 6 months.
191 Medical parole shall be granted to a terminally ill or permanently incapacitated prisoner unless
192 the Commissioner determines by clear and convincing evidence that, if the prisoner is released
193 with appropriate conditions, community supervision, and reasonable accommodations, the
194 prisoner will not live and remain at liberty without violently recidivating. The assessment of
195 terminal illness or permanent incapacitation by a medical provider shall be separate from the
196 public safety risk assessment. Any denial of medical parole shall include a written explanation of
197 the clear and convincing evidence relied upon to determine that the prisoner would not remain at
198 liberty without violently recidivating. No petition shall be denied on medical grounds without a
199 current, in-person evaluation of the prisoner by the licensed physician who is opining that the
200 person is not medically eligible. Petitioners shall have a right to funds for experts pursuant to
201 chapter 261. The parole board shall impose terms and conditions for medical parole that shall
202 apply through the date upon which the prisoner's sentence would have expired and which shall
203 be no more restrictive than the parolee's current medical condition necessitates.

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205 shall be made without bias pertaining to a person's race, ethnicity, disability, religion, sexual
206 orientation, or gender identity.

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208 documented extraordinary circumstances preventing such timely release. A prisoner for whom

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211 section 151 of chapter 127. Not less than 24 hours before the date of a prisoner's release on
212 medical parole, the commissioner shall notify, in writing, the district attorney for the jurisdiction
213 where the offense resulting in the prisoner being committed to the correctional facility occurred,
214 the department of state police, the police department in the city or town in which the prisoner
215 shall reside and, if applicable under chapter 258B, the victim or the victim's family of the
216 prisoner's release and the terms and conditions of the release.

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222 the terms and conditions of a medical parole at any time.

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224 permanent incapacitation has reversed to the extent that the individual would no longer be
225 eligible for medical parole under this section, the board shall obtain a medical assessment by a
226 licensed physician of the individual’s current medical condition. If the medical assessment
227 concludes that the individual has reversed to the extent that they no longer qualify for medical
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233 parole pursuant to this section, the board shall order the return of the individual to incarceration,
234 or, subject to appropriate terms and conditions set by the board, order his release to parole
235 supervision under another form of parole permitted by law. If the board orders revocation and
236 reincarceration pursuant to this subsection, the individual shall return to custody in accordance
237 with the terms of their original sentence with credit given only for the duration of the prisoner's
238 medical parole that was served in compliance with all conditions of their medical parole pursuant
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247 SECTION 8. Section 119A is further amended by striking the word "fiscal" from the first
248 sentence of subsection (f).

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

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