HOUSE DOCKET, NO. 3779 FILED ON: 1/20/2023

HOUSE . . . . . No. 2319

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*	*1/20/2023*
Patricia D. Jehlen	*Second Middlesex*	*1/20/2023*
Lindsay N. Sabadosa	*1st Hampshire*	*1/20/2023*
Jon Santiago	*9th Suffolk*	*2/6/2023*
Joanne M. Comerford	*Hampshire, Franklin and Worcester*	*2/9/2023*
Christine P. Barber	*34th Middlesex*	*2/14/2023*
Rebecca L. Rausch	*Norfolk, Worcester and Middlesex*	*2/23/2023*
Bud L. Williams	*11th Hampden*	*2/23/2023*
Samantha Montaño	*15th Suffolk*	*2/25/2023*
Michelle L. Ciccolo	*15th Middlesex*	*3/2/2023*

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HOUSE . . . . . No. 2319

By Representative Domb of Amherst, a petition (accompanied by bill, House, No. 2319) of Mindy Domb and others relative to access to medical parole. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

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 will likely cause the death of the prisoner in not more than 18 months.

SECTION 2. Section 119A is further amended by adding the following definition after “Secretary”:

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

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

(c)(1) The superintendent of a correctional facility shall consider a prisoner for medical parole upon a written petition by the prisoner, the prisoner's attorney, 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 Department's receipt of the petition, transmit the petition and the recommendation to the commissioner. The superintendent shall transmit with the recommendation: (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 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 must also consider whether reasonable accommodations such as individualized treatment and programming in a community setting could mitigate risk. Such assessment shall be supported, if requested by the petitioner, by routine video surveillance of the prisoner from the prison, demonstrating the prisoner's level of incapacity.

(c)(2) The Department shall submit written petitions on behalf of permanently cognitively incapacitated prisoners. 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. The Department's obligation to submit written petitions on behalf of cognitively incapacitated prisoners does not preclude other appropriate parties from filing petitions on behalf of incarcerated persons with cognitive incapacitation. The Department shall accept release of information forms signed by the prisoner if no guardian has already been appointed.

(c)(3) The Department shall identify prisoners who are cognitively incapacitated through at least annual administration of a standardized cognitive assessment tool to all prisoners aged 55 and older. The Department shall identify all prisoners screening positive for cognitive impairment or who are terminally ill or physically incapacitated in a quarterly report 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 regular 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 cognitive capacity.

(c)(4) Upon the commissioner's receipt of the petition and recommendation pursuant to paragraph (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 provide 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 must 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 parole plan to a private home 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 by the prisoner, the prisoner's attorney, 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 request 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 the Department's receipt of the petition, transmit the petition and 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 consideration of the prisoner's current cognitive and physical ability to violently recidivate, and the probability that violence will actually occur, in light of the

person’s documented current medical condition. When the person's disability-related behaviors contribute to current risk, the Department must also consider whether reasonable accommodations such as individualized treatment and programming in a community setting could mitigate risk. Such assessment shall be supported, if requested by the petitioner, by routine video surveillance of the prisoner from the jail, demonstrating the prisoner’s level of incapacity.

(d)(2) The sheriff shall submit written petitions on behalf of permanently cognitively incapacitated prisoners. The sheriff must 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 sheriff. The Sheriff’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. The sheriff shall accept release of information forms signed by the prisoner if no guardian has already been appointed.

(d)(3) The sheriff shall identify prisoners who are cognitively incapacitated through at least annual administration of a standardized cognitive assessment tool to all prisoners aged 55 and older. The sheriff shall identify all prisoners screening positive for cognitive impairment or who are terminally ill or physically incapacitated in a quarterly report 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 regular 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 cognitive capacity.

(d)(4) Upon the commissioner's receipt of the petition and recommendation pursuant to paragraph (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 appropriate to the individual'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. 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 explain how the petitioner's release would be incompatible with the welfare of society given the petitioner's current medical condition. No petition shall be denied on medical grounds without a current, in-person evaluation of the prisoner by the licensed physician 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 individual'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 improved 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 prisoner's current medical condition. If the medical assessment concludes that the individual no longer qualifies for medical parole, the parole officer shall bring the individual on medical parole 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 revocation hearing that the terminal illness or permanent incapacitation has improved 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 release to parole supervision under another form of parole permitted by law.

If a parole officer receives credible information that an individual on medical parole has failed to comply with a condition of medical parole, the parole officer may initiate parole

revocation proceedings. If the board established at the revocation hearing that the individual has violated a condition of medical parole, it may revoke parole and order return of the individual to incarceration, or order that the individual be reparoled to the community on medical parole subject to appropriate terms and conditions set by the board. In determining whether to order the individual's return to custody, the board shall consider the medical hardship of incarceration and whether provision of reasonable accommodations would enable the individual to comply with the conditions of medical parole.

If the board orders revocation and reincarceration pursuant to this subsection, the prisoner shall return to custody in accordance with the terms of their original sentence with credit given only for the duration of the medical parole that was served in compliance with all conditions of their medical parole pursuant to subsection (e). Revocation of a prisoner's medical parole for any reason shall not preclude a prisoner's 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 subsection (g) and replacing with the following:

(g) A prisoner, sheriff or superintendent aggrieved by a decision denying or granting medical parole made under this section may petition for relief pursuant to section 4 of chapter 249.

A reviewing court may affirm or reverse the commissioner's decision and order grant or denial of the prisoner's release. Petitions for certiorari shall be handled by the judiciary with due haste considering the urgent nature of medical parole. A decision by the court affirming or reversing the commissioner's grant or denial of medical parole shall not affect a prisoner's

eligibility for any other form of release permitted by law. A decision by the court pursuant to this subsection shall not preclude a prisoner's eligibility for medical parole in the future.

SECTION 8. Section 119A is further amended by striking subsection (i) and replacing with the following:

(i) The commissioner and the secretary shall file an annual report not later than March 1 with the clerks of the senate and the house of representatives, the senate and house committees on ways and means and the joint committee on the judiciary detailing, for the prior year: (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, 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 and ethnicity, 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 and age of each prisoner at the time of the petition; (vi) the number of prisoners who have petitioned for medical parole more than once; (vii) the number of prisoners released who have been returned to the custody of the department or the sheriff and the reason for each prisoner's return; and (viii) the number of petitions for relief sought pursuant to subsection (g). Nothing in this report shall include personally identifiable information of the prisoners.