

HOUSE No. 2448

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 remove barriers to medical parole.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|----------------------------|-------------------------|------------------|
| <i>Mindy Domb</i> | <i>3rd Hampshire</i> | <i>2/19/2021</i> |
| <i>Mary S. Keefe</i> | <i>15th Worcester</i> | <i>3/2/2021</i> |
| <i>Patricia D. Jehlen</i> | <i>Second Middlesex</i> | <i>3/3/2021</i> |
| <i>Christine P. Barber</i> | <i>34th Middlesex</i> | <i>3/17/2021</i> |

HOUSE No. 2448

By Ms. Domb of Amherst, a petition (accompanied by bill, House, No. 2448) of Mindy Domb and others relative to 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”

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

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

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

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

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

30 (c)(4) The Department shall identify prisoners who are permanently cognitively or
31 physically incapacitated or terminally ill through the initial physical exam and periodic exams
32 thereafter and shall report all identified cases on a quarterly basis to an appropriate prisoners’
33 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.

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

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

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

68

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

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

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

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

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