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AN ACT

RELATING TO CRIMINAL JUSTICE REFORM; CREATING MEDICAL AND
GERIATRIC PAROLE PROCEDURES; AMENDING AND REPEALING SECTIONS
OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 31-21-5 NMSA 1978 (being Laws 1978,
Chapter 41, Section 1, as amended) is amended to read:

"31-21-5. DEFINITIONS.--As used in the Probation and
Parole Act:

A. "probation" means the procedure under which an
adult defendant, found guilty of a crime upon verdict or
plea, is released by the court without imprisonment under a
suspended or deferred sentence and subject to conditions;

B. "parole" means the release to the community of
an inmate of an institution by decision of the board or by
operation of law, subject to conditions imposed by the board
and to its supervision;

C. "institution" means the state penitentiary and
any other similar state institution hereinafter created;

D. "board" means the parole board;

E. "director" means the director of the adult
probation and parole division of the corrections department
or any employee designated by the director;

F. "adult" means any person convicted of a crime

1 by a district court;

2 G. "geriatric inmate" means a person who:

3 (1) is serving a sentence and is confined in
4 a prison or other correctional institution under the control
5 of the corrections department;

6 (2) is fifty-five years of age or older;

7 (3) suffers from a debilitating and chronic
8 infirmity, illness or disease related to aging; and

9 (4) does not constitute a danger to the
10 person's own self or to society at the time of review;

11 H. "permanently incapacitated inmate" means a
12 person who:

13 (1) is serving a sentence and is confined in
14 a prison or other correctional institution under the control
15 of the corrections department;

16 (2) by reason of an existing medical
17 condition is permanently and irreversibly physically
18 incapacitated; and

19 (3) does not constitute a danger to the
20 person's own self or to society at the time of review; and

21 I. "terminally ill inmate" means a person who:

22 (1) is serving a sentence and is confined in
23 a prison or other correctional institution under the control
24 of the corrections department;

25 (2) has an incurable condition caused by

1 illness or disease that will, within reasonable medical
2 judgment, produce death within six months; and

3 (3) does not constitute a danger to the
4 person's own self or to society at the time of review."

5 SECTION 2. Section 31-21-17.1 NMSA 1978 (being Laws
6 1994, Chapter 21, Section 2) is amended to read:

7 "31-21-17.1. MEDICAL OR GERIATRIC PAROLE--PROCEDURES--
8 DUTIES OF THE CORRECTIONS DEPARTMENT--DUTIES OF THE BOARD.--

9 A. The corrections department shall promulgate
10 rules and implement a medical and geriatric parole program,
11 including the application form for medical or geriatric
12 parole.

13 B. An inmate who is geriatric, permanently
14 incapacitated or terminally ill may seek parole consideration
15 upon written application to the board or consent to
16 submission of an application by and through a family member,
17 attorney or corrections department care provider. When an
18 inmate is physically or mentally incapable of knowingly and
19 voluntarily consenting to submission of an application due to
20 mental or physical infirmity, a family member, attorney,
21 corrections department care provider or other individual with
22 a power of attorney may submit the application on the
23 inmate's behalf.

24 C. The corrections department shall identify
25 geriatric, permanently incapacitated and terminally ill

1 inmates, notify those inmates of the opportunity to apply for
2 medical or geriatric parole and recommend the release of
3 those inmates who are eligible for medical or geriatric
4 parole.

5 D. A classification officer shall provide an
6 inmate over the age of fifty-five with a copy of the medical
7 and geriatric parole policy and any other applicable forms at
8 least once a year. An inmate arriving at a long-term care or
9 geriatric unit managed by the corrections department or
10 placed by the corrections department into long-term care or a
11 facility not managed by the department shall be provided with
12 a copy of the medical and geriatric parole policy, written in
13 the inmate's preferred language, during orientation. A copy
14 of the medical and geriatric parole policy shall be placed
15 and maintained in the law library at each institution of the
16 corrections department.

17 E. An application for medical or geriatric parole
18 shall be submitted to the inmate's classification officer.
19 A classification officer who receives an application shall
20 review the application, make a recommendation, attach any
21 relevant documentation and forward the application package to
22 the appropriate authority as defined by corrections
23 department rule.

24 F. The corrections department shall determine
25 whether to recommend an inmate for medical or geriatric

1 parole and make any recommendations to the board no later
2 than thirty days after receipt of the application by the
3 classification officer. All applications received by the
4 department shall be processed and forwarded to the board.
5 The recommendation shall include the inmate's age, medical
6 history and prognosis and, if applicable, institutional
7 behavior, adjustment and any evidence suggesting
8 rehabilitation during incarceration. When the department
9 recommends an inmate for medical or geriatric parole, the
10 director shall submit a statement to the board that the
11 inmate's release is not incompatible with the welfare of
12 society. In the event that the department is unable to make
13 a determination of recommendation for medical or geriatric
14 parole within thirty days, the department shall document in
15 writing any justification for the delay.

16 G. When considering an inmate for medical or
17 geriatric parole, the director may request that reasonable
18 medical and mental health examinations be conducted; provided
19 that the examinations do not cause delay in the processing
20 time of applications required by this section.

21 H. When determining an inmate's eligibility for
22 medical or geriatric parole, the director shall consider the
23 totality of the circumstances, including:

- 24 (1) the inmate's age;
- 25 (2) the severity of the inmate's illness,

1 disease or infirmity;

2 (3) a comprehensive health evaluation of the
3 inmate;

4 (4) the inmate's institutional behavior,
5 including evidence indicating rehabilitation;

6 (5) the inmate's current level of risk for
7 violence; and

8 (6) any alternative to maintaining the
9 geriatric, permanently incapacitated or terminally ill inmate
10 in a traditional setting.

11 I. Upon receipt of an application and
12 recommendation and supporting documentation from the
13 corrections department for medical or geriatric parole, the
14 board shall review the documentation, schedule a hearing and
15 issue a decision within fifteen days. In the event that a
16 hearing cannot be scheduled and a decision issued within
17 fifteen days, the board shall document in writing any
18 justification for the delay. If an inmate is denied medical
19 or geriatric parole, the board shall notify the inmate and
20 provide service of the copy of the written decision. A copy
21 of the decision shall be sent to the secretary of corrections
22 and the warden of the facility in which the inmate resides.

23 J. The board shall release an inmate on medical or
24 geriatric parole upon recommendation from the director unless
25 the board finds by clear and convincing evidence that the

1 inmate's release is incompatible with the welfare of society
2 and states in writing its reason for the finding. The board
3 may consider the totality of the circumstances, including an
4 inmate's criminal history, but shall not deny medical or
5 geriatric parole solely because of the nature of the charge
6 resulting in the inmate's conviction or the inmate's criminal
7 history.

8 K. A rebuttable presumption that an inmate does
9 not constitute a danger to the inmate's self or to society
10 and is therefore eligible for medical or geriatric parole is
11 established if the inmate:

12 (1) is fifty-five years of age or older and
13 suffers from a debilitating or chronic infirmity, illness or
14 disease related to aging;

15 (2) by reason of an existing medical
16 condition, is permanently and irreversibly physically
17 incapacitated; or

18 (3) has an incurable condition caused by
19 illness or disease that would, within reasonable medical
20 judgment, produce death within six months.

21 L. Pursuant to Section 39-3-1.1 NMSA 1978, an
22 inmate whose decision is denied by the board pursuant to the
23 provisions of this section may appeal the board's decision in
24 the district court in the jurisdiction where the sentence was
25 imposed. When an inmate is physically or mentally incapable

1 of knowingly and voluntarily consenting to submission of an
2 appeal because of a mental or physical infirmity, a family
3 member, attorney, corrections department health care provider
4 or other individual with a power of attorney may submit an
5 appeal on the inmate's behalf. The notice of appeal shall
6 include a statement of any applicable appellate issues. No
7 later than forty-eight hours after the filing of the notice
8 of appeal with the board, the board shall file the record on
9 appeal with the district court, including any applicable
10 appellee response. The district court shall rule on the
11 appeal no later than seventy-two hours after the record on
12 appeal is filed.

13 M. An inmate who has not served the inmate's
14 minimum sentence may be considered eligible for parole under
15 the medical and geriatric parole program. Medical and
16 geriatric parole shall be in addition to any other parole for
17 which a geriatric, permanently incapacitated or terminally
18 ill inmate may be eligible.

19 N. The parole term of a geriatric, permanently
20 incapacitated or terminally ill inmate on medical or
21 geriatric parole shall be for the remainder of the inmate's
22 basic sentence and parole without diminution of sentence for
23 good behavior.

24 O. In the event that the inmate is a terminally
25 ill inmate, the corrections department shall determine

1 whether to recommend an inmate for medical or geriatric
2 parole within fifteen days of the receipt of the inmate's
3 application by the classification officer, and the board
4 shall issue a decision within seven days. In the event that
5 the department is unable to determine whether to recommend an
6 inmate for medical or geriatric parole within fifteen days
7 pursuant to this subsection, the department or the board
8 shall document any justification for the delay in writing.

9 P. An inmate who has been denied parole pursuant
10 to the provisions of this section may reapply if additional
11 information is received or if the inmate's condition so
12 warrants.

13 Q. An inmate convicted of first degree murder
14 shall not be considered eligible for medical or geriatric
15 parole."

16 SECTION 3. REPEAL.--Section 31-21-25.1 NMSA 1978 (being
17 Laws 1994, Chapter 21, Section 3) is repealed.

18 SECTION 4. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is July 1, 2023. _____

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