

State of New York
Department of Corrections
and
Community Supervision
Board of Parole
Building Number 2
Harriman Office Campus
Albany, New York 12226

**MEDICAL PAROLE
2013**



**Andrew M. Cuomo
Governor**



**Anthony J. Annucci
Acting Commissioner**



**Tina M. Stanford
Chairwoman**

INTRODUCTION

Sections 259-r and 259-s of the Executive Law require the chair of the Board of Parole to provide the Governor and the Legislature with an annual report concerning all inmates who have been granted or considered for early release from prison pursuant to the New York State Medical Parole Law. This report highlights medical parole activity from the program's inception in June 1992 through December 31, 2013.

MEDICAL PAROLE PROGRAM

Chapter 55 of the Laws of 1992 created the New York State Medical Parole Law by enacting section 259-r of the Executive Law. This statute, which became effective in April 1992, gave the Parole Board the authority to grant parole release to certain terminally ill inmates prior to the expiration of the minimum term of their sentence. Previously, only a grant of executive clemency could allow for the release of a terminally ill offender before their parole eligibility date. As a result, inmates suffering from debilitating and terminal diseases spent their final days far from family at significant cost to the State. Medical parole represented a compassionate and practical response to dying inmates who posed little threat to society due to the incapacitation caused by their illnesses.

In 2009, the enactment of Chapter 56 of the Laws of 2009, Part J, provided the Board of Parole with the authority to grant certain inmates release to medical parole who are certified as suffering from a non-terminal condition, disease or syndrome and are so debilitated that there is a reasonable probability they are either physically or cognitively incapable of presenting any danger to society. Previously, the law governing medical parole, Executive Law §259-r, only allowed the Parole Board to grant this type of release to inmates who were terminally ill by reason of a physical disease, condition or syndrome. However, by enacting Executive Law §259-s, this type of release became available to inmates suffering from a non-terminal illness, as well as to inmates who are cognitively incapable of presenting a danger to society.

In March 2011, the former Department of Correctional Services merged with the former Division of Parole to create the Department of Corrections and Community Supervision (DOCCS) (see Chapter 62 of the Laws of 2011, Part C, subpart A). Since the merger, the Department staff that previously administered the process for assessing an eligible inmate's medical condition has continued to shoulder that responsibility. In addition, the DOCCS Commissioner has continued to certify cases to the Board of Parole following a medical assessment for review and consideration under Executive Law §§259-r and 259-s.

Eligibility

Release on medical parole may be granted by the Parole Board only after a physician diagnoses the inmate as suffering from either a terminal medical condition or a permanent non-terminal medical condition that renders him or her so debilitated or incapacitated, mentally or physically, as to be severely restricted in his or her ability to self-ambulate or to perform significant normal activities of daily living. The Commissioner of DOCCS or a designee reviews the physician's diagnosis and conclusions and certifies that the inmate is so debilitated or

incapacitated as to create a reasonable probability that he or she is physically or cognitively incapable of presenting any danger to society.

Although most terminally ill inmates are eligible for consideration, sections 259-r and 259-s of the Executive Law deem any inmate serving a sentence for murder in the first, or an attempt or conspiracy to commit murder in the first degree ineligible for medical parole. The convictions and sentences of all applicants are thoroughly screened to ensure that ineligible inmates are excluded from program consideration.

The Release Decision

The medical parole release decision standard utilized by the Board of Parole is defined in sections 259-r and 259-s of the Executive Law. These subdivisions mandate that release on medical parole be granted, “only after the board considers whether, in light of the inmate’s medical condition, there is a reasonable probability that the inmate, if released, will live and remain at liberty without violating the law, and that such release is not incompatible with the welfare of society and will not so deprecate the seriousness of the crime as to undermine respect for the law.” It empowers the Board to grant release on medical parole to DOCCS certified applicants at specified times during their incarceration, prior to completion of the court-imposed minimum sentence. As with any case considered for release consideration, a Board panel review is required and institutional staff prepare a parole board report.

Pursuant to sections 259-r and 259-s of the Executive Law, the sentencing judge, office of the prosecuting district attorney, and defense counsel are provided written notice that the inmate is being considered for medical parole and are afforded an opportunity to submit comments to the Board. The Board cannot make a release decision until the expiration of the prescribed comment period.

DOCCS provides a statutorily required medical discharge plan to the Board of Parole, the standards of which are based on hospital discharge planning regulations. The medical discharge plan identifies the level of medical care the inmate will require upon release and shall state that the availability of the placement has been confirmed, and by whom.

Post-Release Review

Prior to the expiration of the initial six-month period of medical parole, the Board reviews each case to decide whether to renew the grant of medical parole. The Executive Law requires the medical parolee to undergo “...a medical examination at least one month prior to the expiration of the period of medical parole.” For the purpose of making an extension decision, the statute further requires the medical parolee to provide the Board with a report, prepared by the treating physician, summarizing the results of the medical examination. The report must specifically address whether the medical parolee continues to suffer from the terminal or significant and permanent non-terminal medical condition that resulted in his or her early release and assess their ability to self-ambulate or to perform significant normal activities of daily living. Community Supervision Field staff maintains contact with medical providers to ensure that medical reports are submitted to the Board as required.

A due-process hearing is required if the Board does not receive an appropriate medical report or if there is information that would be supportive of non-renewal of the grant of medical parole. If a Board decision is still pending at the time the six-month term of medical parole expires, the term is extended and the medical parolee remains in the community pending the Board's decision. Section 259-r of the Executive Law mandates that alleged violators be lodged at a State correctional facility, rather than at a local jail, during any revocation proceedings for inmates granted release via medical parole.

Medical Parole Program Highlights

Appendix A includes summaries of medical parole processing and outcomes for all applications reviewed by the Board of Parole through December 2013.

- ◆ From June 1992 through the end of December 2013, there were 495 certified applications submitted for medical parole. The past five years showed an average of 13 applications submitted per year: 12 in 2009; 10 in 2010; 10 in 2011; 18 in 2012 and 17 during 2013.
- ◆ The primary diagnoses of the 495 applicants were as follows: HIV+/AIDS (55%), Cancer (28%) and Other (16%). Eighty-six percent of the applicants were male and 14 percent were female.
- ◆ Of the 495 applicants for medical parole, 106 dropped out of the medical parole process prior to having a Board Interview. Of these, 99 applicants died prior to Board Interview, 4 applicants withdrew their applications and the remaining 3 applicants were discharged by court order or had reached their parole eligibility date prior to Board Interview.
- ◆ From June 1992 through December 2013, 354 of the 389 (91%) medical parole applicants who appeared before the Board were granted medical parole. The 29 applicants who were denied release were denied due to risk assessment/criminal history. The remaining 6 were postponed and died prior to their next Board appearance.
- ◆ For those inmates appearing before the Parole Board through December 2013, an average of 22 business days elapsed between the date the application was received and the date of the Board appearance; however, excluding the statutorily required 15-day waiting period, an average of 7 business days elapsed.
- ◆ For those inmates granted release in 2013, an average of 21 business days elapsed between the Board appearance date and the release date. This was a 16% decrease from 25 business days during 1993.
- ◆ Since medical parole's inception in June 1992, approximately 56,531 prison days have been saved due to parolees' early release to medical parole supervision.
- ◆ A total of 83 percent (270) of the 327 inmates released on medical parole through December 2013 were released to New York City. The remaining 57 inmates were released to counties in

upstate New York.

- ◆ Placements pursuant to the final medical discharge plans for the 327 releases through December 2013 were as follows: 219 to skilled nursing facilities, 51 to hospital settings, 53 to home care and 3 to hospice care (*missing placement information for one person*).
- ◆ A total of 17 (5%) of the 327 cases granted medical parole and released between June 1992 and December 2013 were still under medical parole supervision at the end of December 2013. Two hundred nineteen parolees (71%) died following release, 84 parolees (27%) converted to regular parole at their PE dates, one was discharged as a merit termination, one was discharged by the Board, and 5 parolees (2%) were revoked and returned to prison.
- ◆ The 17 parolees under medical parole supervision at the end of December 2013 had been under supervision for a total of 5,387 days, or an average of 317 days per parolee. Each parolee's medical condition is assessed every six months to ascertain the appropriateness of their continued status on medical parole.

Conclusion

The medical parole program continues to meet its primary objective to provide a compassionate release mechanism for sick or dying inmates. As the medical parole program marked 21 ½ years of existence at the end of December 2013, only 5 of the 327 medical parole releasees (2%) had been returned to prison. Since program inception, it is estimated that approximately 56,531 prison days have been saved.

APPENDIX A

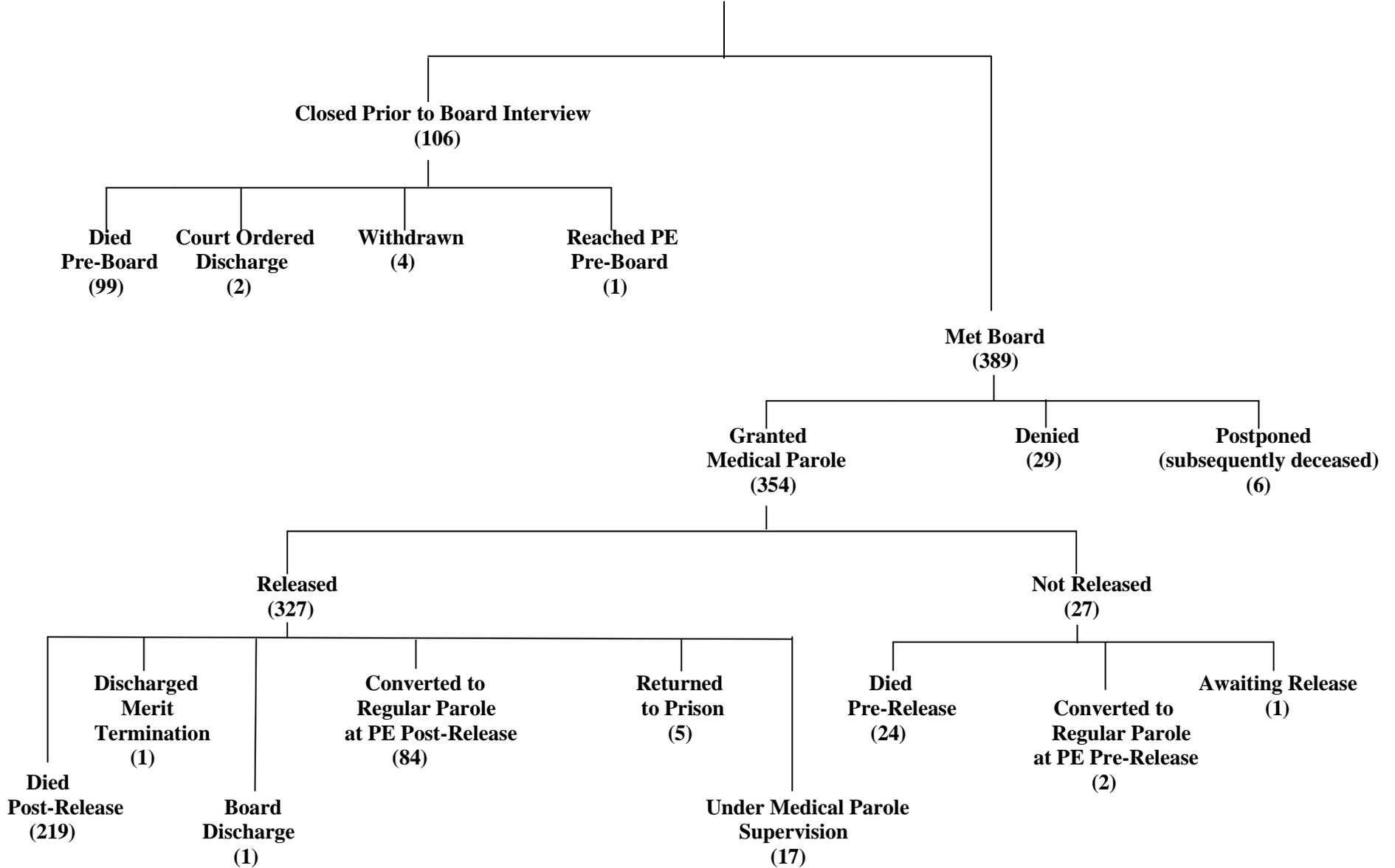
**MEDICAL PAROLE APPLICATION PROCESSING
1 JUNE 1992 - DECEMBER 2013
AND
2 JANUARY - DECEMBER 2013**

1 - MEDICAL PAROLE APPLICATION PROCESSING

June 1992 – December 2013

Certified Applications Received

(495)

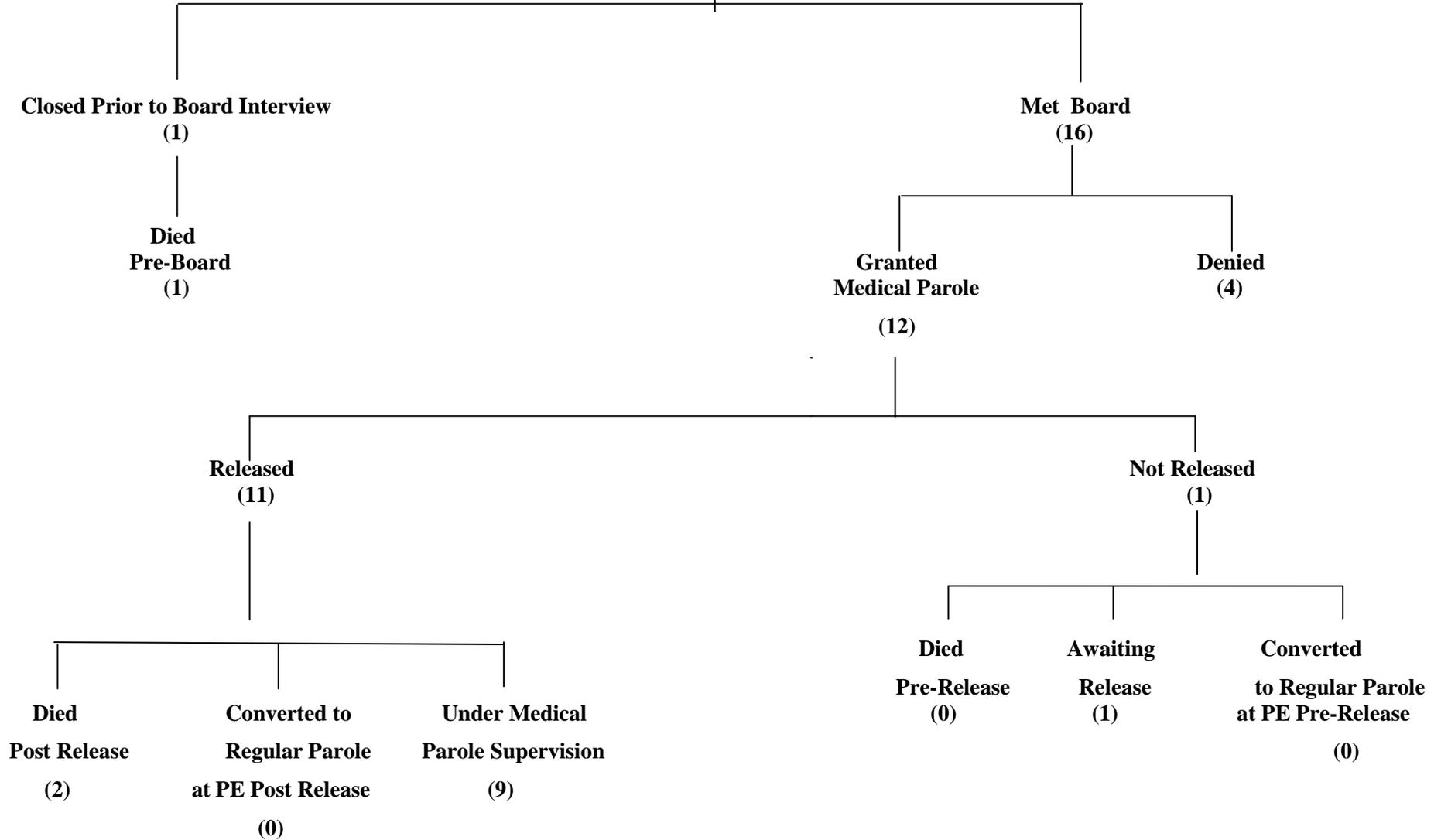


2 - MEDICAL PAROLE APPLICATION PROCESSING

January – December 2013

Certified Applications Received

(17)



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