



# Corrections and Community Supervision

## Medical Parole 2014

## 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, 2014.

## 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 were so debilitated or incapacitated that there was a reasonable probability they were incapable of presenting any danger to society.

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 Department's 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 1<sup>st</sup> Degree, or an attempt or conspiracy to commit Murder in the 1<sup>st</sup> Degree ineligible for medical parole. The convictions and sentences of all applicants are thoroughly screened to ensure that ineligible inmates are excluded from medical parole consideration.

### **The Release Decision**

The standards to be utilized by the Board of Parole when making medical parole release decisions are set forth 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 discretionary release consideration, a Board panel consisting of at least two Board members is required to conduct an interview with the inmate and review the case record that has been prepared by institutional staff.

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 for its review and consideration when assessing the appropriateness for granting this type of release. The standards against which the discharge plans are developed are consistent with hospital discharge planning regulations. The medical discharge plan identifies the level of medical care the inmate will require upon release and shall confirm the availability of a suitable placement in the community.

### **Post-Release Review**

Prior to the expiration of the initial six-month period of medical parole, the Board reviews each case to decide whether the offender’s medical parole should be continued. 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 statutes further require 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 hearing is required if the Board does not receive an appropriate medical report or if there is information indicating that the grant of medical parole is no longer warranted under the governing standard. 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 under this provision of the Executive Law.

### **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 2014.

- ◆ From June 1992 through the end of December 2014, there were 525 certified applications submitted for medical parole. The past five years showed an average of 17 applications submitted per year: 10 in 2010; 10 in 2011; 18 in 2012; 17 in 2013 and 30 during 2014.
- ◆ The primary diagnoses of the 525 applicants were as follows: HIV+/AIDS (53%), Cancer (30%) and Other (18%). Eighty-six percent of the applicants were male and 14 percent were female.
- ◆ Of the 525 applicants for medical parole, 112 dropped out of the medical parole process prior to having a Board Interview. Of these, 108 applicants died prior to Board Interview, 1 applicant withdrew their application 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 2014, 371 of the 413 (90%) medical parole applicants who appeared before the Board were granted medical parole. The 35 applicants who were denied release were denied due to risk assessment/criminal history. The remaining 7 were postponed and died prior to their next Board appearance.
- ◆ For those inmates appearing before the Parole Board through December 2014, an average of 23 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 8 business days elapsed.
- ◆ For those inmates released to Medical Parole in 2014, an average of 22 business days elapsed between the Board appearance date and the release date. This was a 12% decrease from 25 business days during 1993.
- ◆ Since medical parole's inception in June 1992, approximately 58,300 prison days have been saved due to parolees' early release to medical parole supervision.

- ◆ A total of 81 percent (278) of the 342 inmates released on medical parole through December 2014 were released to New York City. The remaining 64 inmates were released to counties in upstate New York.
- ◆ Placements pursuant to the final medical discharge plans for the 342 releases through December 2014 were as follows: 229 to skilled nursing facilities, 51 to hospital settings, 58 to home care and 3 to hospice care (*missing placement information for one person*).
- ◆ A total of 25 (7%) of the 342 cases granted medical parole and released between June 1992 and December 2014 were still under medical parole supervision at the end of December 2014. Two hundred twenty-four parolees (71%) died following release, 85 parolees (27%) converted to regular parole at their PE dates, one was discharged as a merit termination, one was discharged by the Board, and 6 parolees (2%) were revoked and returned to prison.
- ◆ The 25 parolees under medical parole supervision at the end of December 2014 had been under supervision for a total of 10,677 days, or an average of 427 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**

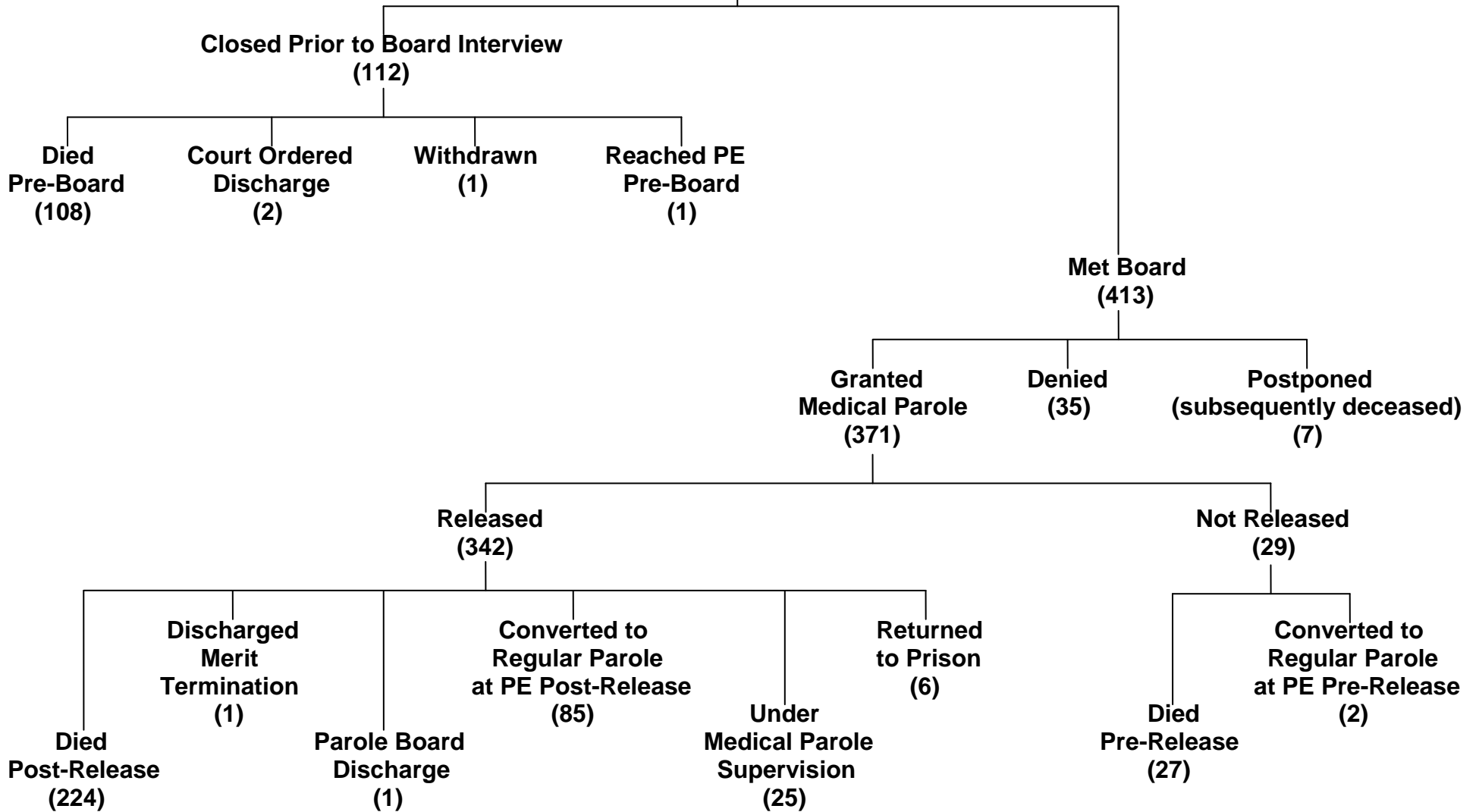
The medical parole program continues to meet its primary objective to provide a compassionate release mechanism for the Department's most severely debilitated or dying inmates. As the medical parole program marked its 22 ½ years of existence at the end of December 2014, only 6 of the 342 medical parole releasees (2%) had been returned to prison. Since the program's inception, it is estimated that approximately 58,300 prison days have been saved.

**APPENDIX A**

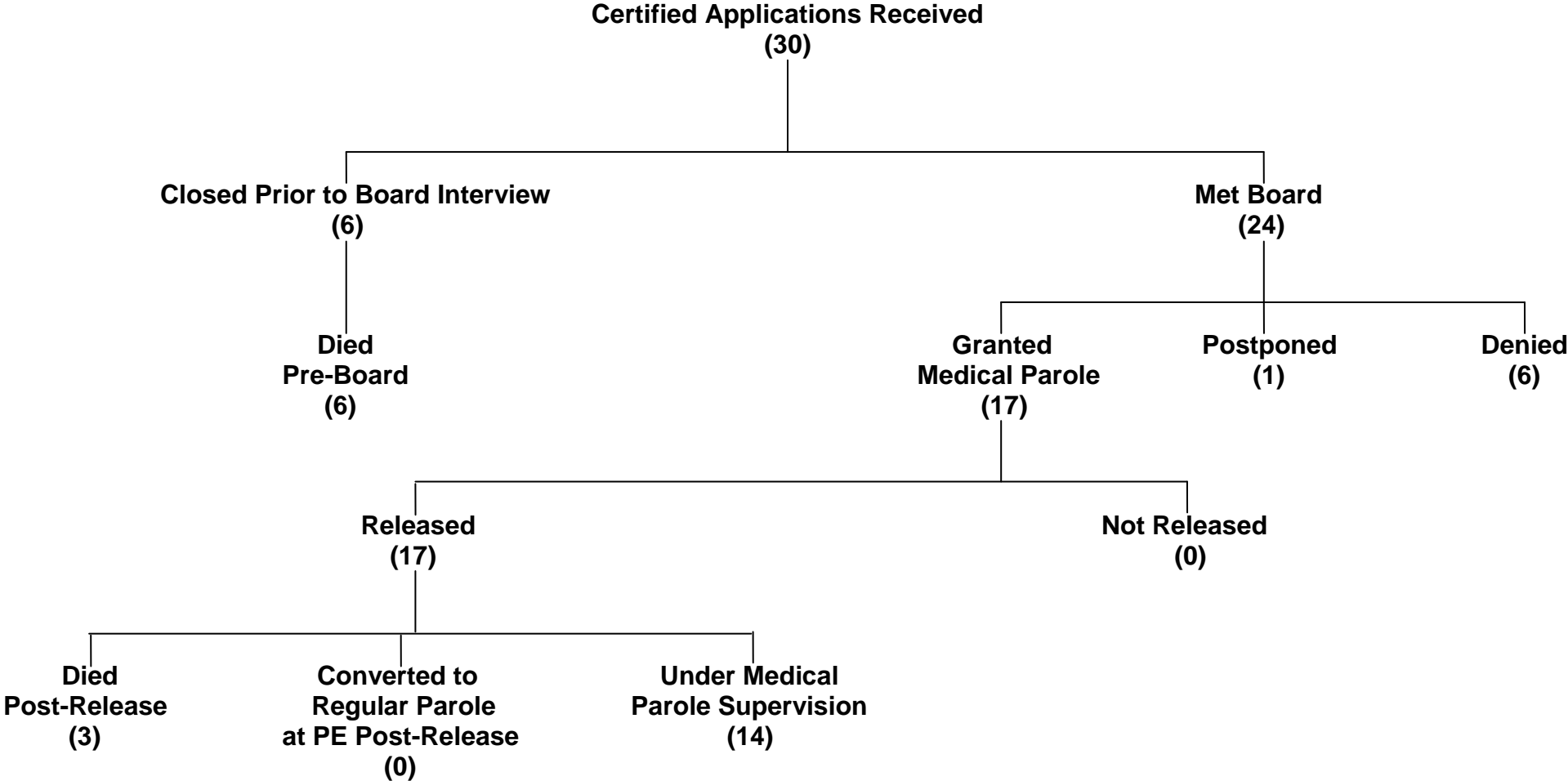
**MEDICAL PAROLE APPLICATION PROCESSING  
1 JUNE 1992 - DECEMBER 2014  
AND  
2 JANUARY - DECEMBER 2014**

**1 - MEDICAL PAROLE APPLICATION PROCESSING**  
 June 1992 – December 2014

**Certified Applications Received  
 (525)**



**2 - MEDICAL PAROLE APPLICATION PROCESSING**  
**January – December 2014**





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