



Department of Corrections and Community Supervision

Medical Parole Legislative Report 2022

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Section 1 – 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 Board of Parole the authority to grant parole release to certain terminally ill incarcerated individuals prior to the expiration of the minimum period of their sentence. Previously, only a grant of executive clemency could allow for the release of a terminally ill individual before their parole eligibility date. As a result, incarcerated individuals suffering from debilitating and terminal diseases spent their final days far from their families and at a significant cost to the State. Medical parole represented a compassionate and practical response to dying incarcerated individuals who were so debilitated or incapacitated that there was a reasonable probability they were incapable of presenting any danger to society.

Chapter 56 of the Laws of 2009 gave the Board the authority to grant incarcerated individuals release to medical parole who are certified as suffering from a significant debilitating illness by enacting section 259-s of the Executive Law.

Consistent with Departmental policy, Department staff assess an eligible incarcerated individual's medical condition (as detailed in DOCCS Directive 4304, found here: https://doccs.ny.gov/system/files/documents/2023/02/4304-public_1.pdf). In addition, the Commissioner of DOCCS continues to certify cases to the Board following a medical assessment for review and consideration under sections 259-r (terminal) and 259-s (non-terminal) of the Executive Law.

Eligibility

Release on medical parole may be granted by the Parole Board only after an incarcerated individual is diagnosed by a physician to suffer from either a terminal medical condition or a permanent non-terminal medical condition that renders them so debilitated or incapacitated, mentally or physically, as to be severely restricted in their 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 certifies that the incarcerated individual is so debilitated or incapacitated as to create a reasonable probability that the individual is physically or cognitively incapable of presenting any danger to society.

The convictions and sentences of all applicants are thoroughly screened to ensure that ineligible incarcerated individuals are excluded from medical parole consideration. In particular, sections 259-r and 259-s of the Executive Law deem any incarcerated individual serving a sentence for Murder in the 1st Degree, or an attempt or conspiracy to commit Murder in the 1st Degree ineligible for medical parole. Additionally, if the individual is serving a sentence for Murder in the Second Degree, Manslaughter in the First Degree, any offence defined in Article 130 of the Penal Law, or an attempt to commit any of these

offenses, the individual must have served at least one-half of the minimum period of their sentence, and in the case of a determinate sentence, they must have served at least one-half of their sentence.

The Release Decision

The Board utilizes the standards set forth in sections 259-r and 259-s of the Executive Law to make medical parole release decisions. These sections mandate that release on medical parole be granted, “only after the board considers whether, in light of the incarcerated individual’s medical condition, there is a reasonable probability that the incarcerated individual, 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 also 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, a panel consisting of no fewer than two, nor more than three Board commissioners is required to conduct an interview with the incarcerated individual and review the case record that was prepared by DOCCS staff.

Pursuant to sections 259-r and 259-s of the Executive Law, the sentencing judge, prosecuting district attorney, and defense counsel are provided written notice when the incarcerated individual 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, which is fifteen days for terminally ill people and thirty days for non-terminally ill people.

The Department is statutorily required to provide a medical discharge plan to the Board 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 incarcerated individual will require upon release and confirms the availability of a suitable placement in the community.

In 2015, the New York State Executive law governing release on medical parole was amended by enacting section 259-r (10) & (11) to allow certain eligible incarcerated individuals to be granted medical parole presumptively by the Commissioner of DOCCS, with the Chairperson of the Board of Parole’s review and approval. The incarcerated individual’s crime must be non-violent. During 2022, there was one discretionary medical parole case, which is included in the statistics reported.

Section 2 – Medical Parole Applications to the Parole Board

There were 138 certified medical parole applications submitted to the Board of Parole from 2018 through 2022, which represents an average of 28 applications submitted per year during this five-year period. These applications represented 134 incarcerated individuals. Four individuals submitted an additional application within the timeframe.

Among the 138 medical parole applications, 91% (126) of the applications were for males and 84% (116) were for individuals aged 50 and older. The average age of applicants during the five-year period was 61 years old. The primary diagnosis of the 138 applicants was cancer (42%).

**TABLE 1. MEDICAL PAROLE APPLICATIONS TO THE PAROLE BOARD
INDIVIDUAL CHARACTERISTICS
2018 through 2022**

| | Application Year | | | | | Total | % |
|---------------------------|------------------|-----------|-----------|-----------|-----------|------------|-------|
| | 2018 | 2019 | 2020 | 2021 | 2022 | | |
| GENDER | | | | | | | |
| Male | 27 | 29 | 17 | 21 | 32 | 126 | 91.3% |
| Female | 1 | 5 | 2 | 2 | 2 | 12 | 8.7% |
| AGE | | | | | | | |
| Under 20 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0% |
| 20-29 | 0 | 1 | 0 | 0 | 0 | 1 | 0.7% |
| 30-39 | 1 | 2 | 5 | 3 | 3 | 14 | 10.1% |
| 40-49 | 0 | 2 | 2 | 1 | 2 | 7 | 5.1% |
| 50-59 | 7 | 10 | 7 | 4 | 6 | 34 | 24.6% |
| 60-69 | 11 | 13 | 2 | 9 | 11 | 46 | 33.3% |
| 70-79 | 6 | 2 | 2 | 4 | 8 | 22 | 15.9% |
| 80-89 | 3 | 4 | 1 | 2 | 4 | 14 | 10.1% |
| Average Age | 65 | 60 | 53 | 61 | 64 | 61 | |
| DIAGNOSIS | | | | | | | |
| Alzheimers | 1 | 1 | 0 | 1 | 0 | 3 | 2.2% |
| Cancer | 7 | 13 | 11 | 11 | 16 | 58 | 42.0% |
| COPD | 2 | 0 | 1 | 0 | 0 | 3 | 2.2% |
| Diabetes | 0 | 2 | 0 | 0 | 0 | 2 | 1.4% |
| Heart Disease | 4 | 5 | 0 | 2 | 5 | 16 | 11.6% |
| Kidney Disease | 1 | 0 | 0 | 1 | 0 | 2 | 1.4% |
| Liver Disease | 0 | 1 | 0 | 0 | 2 | 3 | 2.2% |
| Parkinsons | 1 | 0 | 1 | 0 | 0 | 2 | 1.4% |
| Stroke | 3 | 0 | 2 | 2 | 4 | 11 | 8.0% |
| Other | 9 | 12 | 4 | 6 | 7 | 38 | 27.5% |
| TOTAL APPLICATIONS | 28 | 34 | 19 | 23 | 34 | 138 | |

Section 3 – Parole Board Activity

Among the 138 certified medical parole applications submitted to the Parole Board for consideration, there were 119 medical parole interviews and reviews conducted by the Board of Parole between 2018 and 2022. As shown in Figure 1, the other 19 cases died prior to their Board interview (N=14), were awaiting an interview as of the end of the 2022 (N=3), or were released on regular parole (N=2).

These 119 interviews included new applications for medical parole, individuals who applied prior to 2018 but saw the Board during this period and those who re-applied after a previous denial. Seventy-eight percent (78%) of the 119 medical parole interviews and reviews conducted by the Board from 2018 to 2022 resulted in a release decision, while only 20% resulted in a denial.

**TABLE 2. MEDICAL PAROLE BOARD INTERVIEWS AND REVIEWS
2018 through 2022**

| | Interview Year | | | | | Total |
|--|----------------|------|------|------|------|------------|
| | 2018 | 2019 | 2020 | 2021 | 2022 | |
| Medical Parole Interviews & Reviews | 23 | 29 | 17 | 24 | 26 | 119 |
| Granted Release | 16 | 21 | 15 | 21 | 21 | 93 |
| Denied Release | 6 | 8 | 3 | 2 | 5 | 24 |
| Postponed | 1 | 0 | 0 | 1 | 0 | 2 |
| Approval Rate* | 70% | 72% | 88% | 88% | 81% | 78% |

* The approval rate represents the number of Medical Parole interviewees that were granted release in that year, not the number of applications in that year that were ultimately granted release.

Releases

Among the 93 interviews and reviews resulting in a release decision from 2018 through 2022, 75% (70) were released to the community within the five-year period of 2018 - 2022. Among the 23 individuals not released to the community during this period, 16 died prior to release and 7 were awaiting release at the end of 2022.

The most common county of release for medical parole releasees was Queens County.

**TABLE 3. MEDICAL PAROLE RELEASES TO THE COMMUNITY
2018 through 2022
COUNTY OF RELEASE BY INTERVIEW YEAR**

| County of Release | Interview Year | | | | | Total |
|-------------------|----------------|-----------|-----------|-----------|-----------|-----------|
| | 2018 | 2019 | 2020 | 2021 | 2022 | |
| Albany | 1 | 0 | 1 | 0 | 0 | 2 |
| Bronx | 2 | 0 | 0 | 0 | 3 | 5 |
| Clinton | 0 | 0 | 0 | 0 | 1 | 1 |
| Dutchess | 1 | 1 | 0 | 0 | 0 | 2 |
| Erie | 1 | 0 | 1 | 2 | 1 | 5 |
| Kings | 1 | 2 | 0 | 0 | 0 | 3 |
| Monroe | 0 | 1 | 0 | 0 | 0 | 1 |
| Nassau | 0 | 0 | 0 | 0 | 2 | 2 |
| New York | 1 | 2 | 2 | 1 | 0 | 6 |
| Niagara | 0 | 1 | 0 | 1 | 1 | 3 |
| Oneida | 1 | 2 | 0 | 0 | 0 | 3 |
| Onondaga | 0 | 1 | 1 | 1 | 0 | 3 |
| Orange | 0 | 2 | 0 | 0 | 2 | 6 |
| Queens | 2 | 0 | 2 | 3 | 2 | 9 |
| Richmond | 0 | 0 | 1 | 0 | 0 | 1 |
| St. Lawrence | 0 | 0 | 0 | 1 | 0 | 1 |
| Saratoga | 0 | 1 | 0 | 0 | 0 | 1 |
| Suffolk | 0 | 1 | 2 | 1 | 0 | 4 |
| Sullivan | 0 | 0 | 1 | 0 | 0 | 1 |
| Tioga | 0 | 0 | 1 | 0 | 0 | 1 |
| Ulster | 1 | 0 | 0 | 0 | 0 | 1 |
| Westchester | 1 | 1 | 1 | 2 | 1 | 6 |
| Out of State | 0 | 1 | 0 | 0 | 2 | 3 |
| Total | 12 | 16 | 13 | 12 | 15 | 70 |

Almost half (47%) of the individuals released on medical parole from 2018 through 2022 were released to live in private residences. Thirty-one percent of medical parole releases went to skilled nursing facilities or hospitals during the 5-year period.

**TABLE 4. TYPE OF MEDICAL PAROLE PLACEMENT
BY YEAR OF RELEASE
2018 through 2022 MEDICAL PAROLE RELEASES TO THE COMMUNITY**

| Medical Parole Placement | Release Year | | | | | Total |
|--------------------------|--------------|-----------|-----------|-----------|-----------|-----------|
| | 2018 | 2019 | 2020 | 2021 | 2022 | |
| Private Residence | 3 | 7 | 6 | 6 | 11 | 33 |
| Skilled Nursing/Hospital | 0 | 6 | 5 | 5 | 6 | 22 |
| Other | 0 | 7 | 5 | 1 | 2 | 15 |
| Total | 3 | 20 | 16 | 12 | 19 | 70 |

Denials

Medical parole applications can be denied for multiple reasons. Between 2018 and 2022, there were 24 denials with 79 denial reasons. The most common denial reason cited by the Parole Board was the seriousness of the offense (18%).

**TABLE 5. MEDICAL PAROLE INTERVIEWS
DENIAL REASONS BY INTERVIEW YEAR
2018 through 2022**

| Denial Reason | Interview Year | | | | | Total Denial Reasons | |
|-----------------------------------|----------------|-----------|----------|----------|-----------|----------------------|-------------|
| | 2018 | 2019 | 2020 | 2021 | 2022 | | |
| Serious Offense | 6 | 5 | 0 | 1 | 2 | 14 | 17.7% |
| Vulnerable Victim | 1 | 3 | 0 | 1 | 3 | 8 | 10.1% |
| Caused Victim Death | 3 | 2 | 1 | 0 | 1 | 7 | 8.9% |
| Used Weapon | 1 | 2 | 0 | 0 | 3 | 6 | 7.6% |
| Previous Criminal History | 2 | 1 | 1 | 0 | 1 | 5 | 6.3% |
| DA/Judge Opposes | 1 | 0 | 2 | 0 | 1 | 4 | 5.1% |
| Multiple Victims | 2 | 0 | 0 | 0 | 2 | 4 | 5.1% |
| Refusal to Appear | 1 | 0 | 0 | 1 | 2 | 4 | 5.1% |
| Excessive Violence Against Victim | 0 | 1 | 1 | 0 | 2 | 4 | 5.1% |
| Multiple Offenses | 2 | 0 | 0 | 0 | 1 | 3 | 3.8% |
| Previous Parole Failure | 1 | 0 | 1 | 0 | 1 | 3 | 3.8% |
| Offense Included Sexual Abuse | 1 | 1 | 0 | 0 | 1 | 3 | 3.8% |
| Other | 2 | 5 | 2 | 0 | 5 | 14 | 17.7% |
| Total | 23 | 20 | 8 | 3 | 25 | 79 | 100% |

*Represents all denial reasons recorded across 24 Individuals denied medical parole in 2018 through 2022.

Section 4 – Active Cases, Returns, and Concluding Remarks

Figure 1 presents the process flow of medical parole applications between 2018 and 2022. Of the 138 applications for medical parole submitted to the Board from 2018 through 2022, 14 (10%) died prior to a Board interview, 2 (1%) were released on regular parole and 3 (2%) were awaiting an interview at the end of 2022.

Ninety-three (78%) of the 119 applicants who met the Board were granted medical parole. Seventy (75%) of these 93 applicants were released from custody by the end of 2022. Sixteen (17%) died prior to release.

Among the 70 individuals released from custody, there were 44 (63%) individuals still on Community Supervision at the end of 2022: 16 on active medical parole supervision and 28 on regular parole supervision. Seventeen individuals (24%) died after release, 3 transferred out of state, 4 were discharged from supervision and 2 returned to prison for violating conditions of parole.

As shown in Figure 2, among the 34 applications received by the Parole Board in 2022, 26 (76%) met with the Parole Board and 21 of those (81%) were granted medical parole. The large majority (17) were released on medical parole, while 3 were awaiting release at the end of 2022 and one individual died prior to release.

During the five-year period of 2018 through 2022, approximately 10,573 prison days were saved due to early release to medical parole supervision. The highest individual contribution was 1,140 days with the average savings of 207 days per medical parole release.

Figure 1 – Medical Parole Application Processing 2018 – 2022

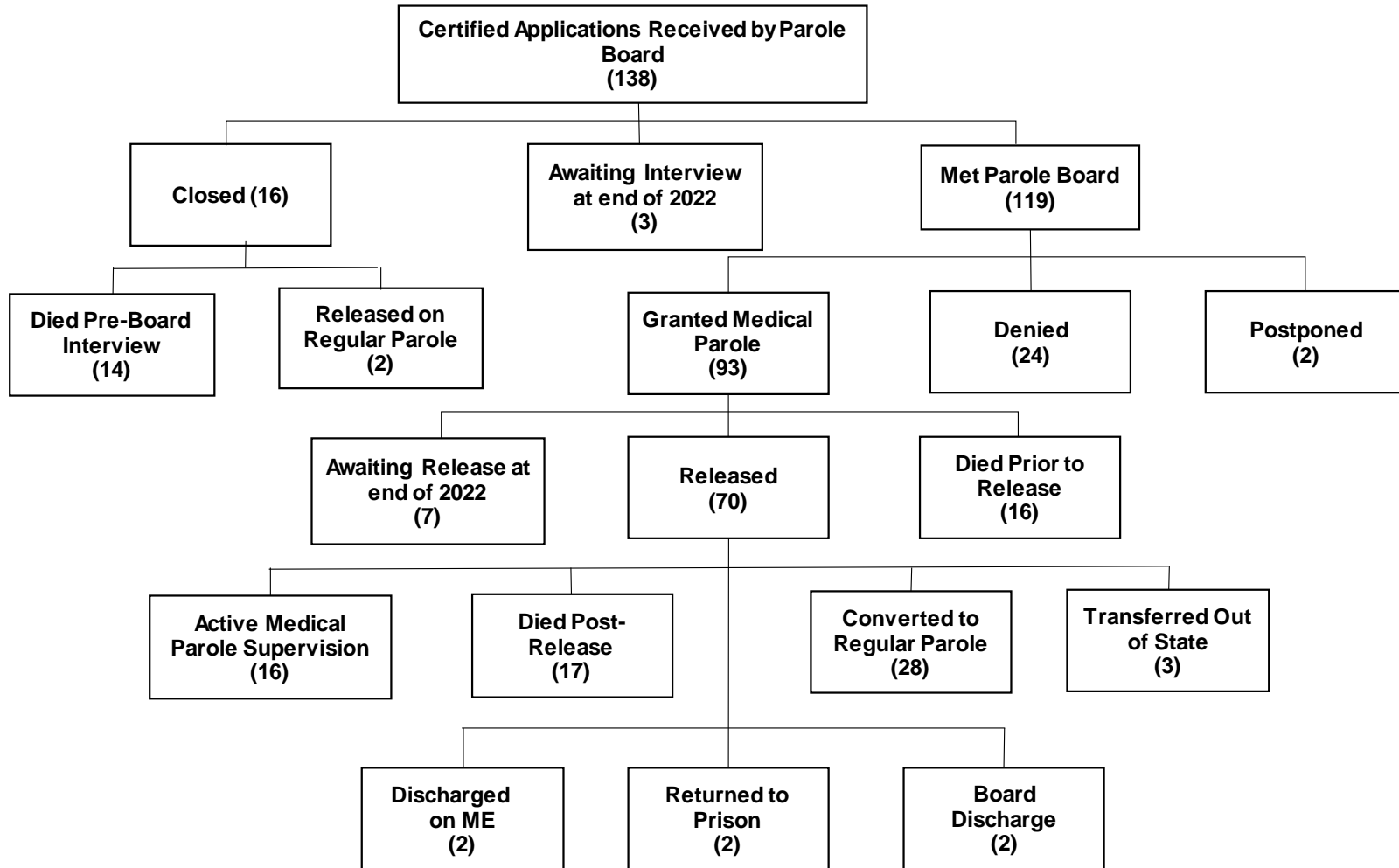
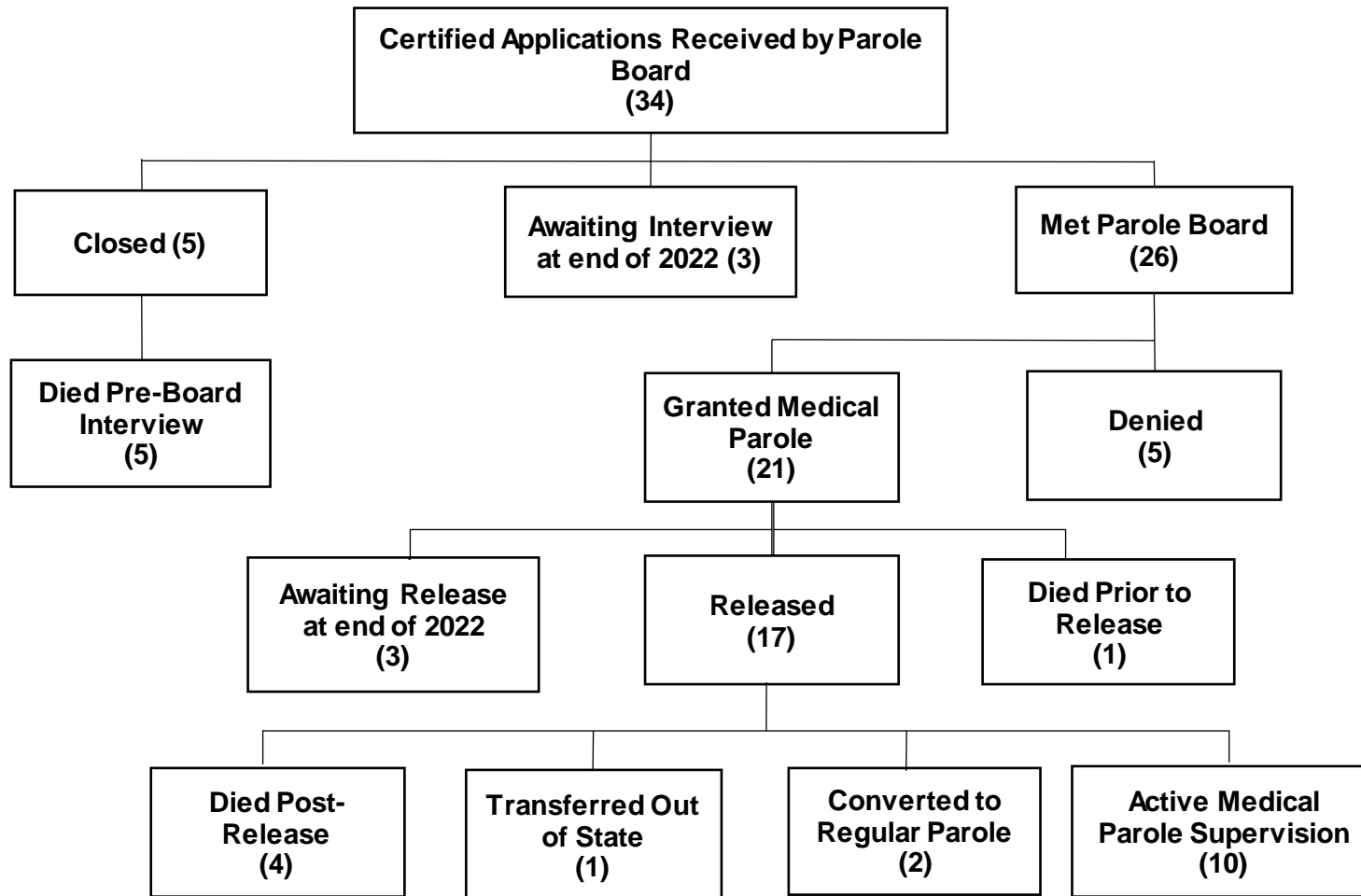


Figure 2 - Medical Parole Application Processing 2022



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