

1 H.623

2 Introduced by Representatives Burke of Brattleboro, Batchelor of Derby,
3 LaLonde of South Burlington, and Rachelson of Burlington

4 Referred to Committee on

5 Date:

6 Subject: Corrections; parole

7 Statement of purpose of bill as introduced: This bill proposes to establish a
8 judicial procedure to allow for the compassionate release of certain inmates,
9 including those who have been diagnosed with a terminal disease, and to
10 increase parole eligibility for older inmates and inmates who have served their
11 minimum sentence.

12 ~~An act relating to compassionate release and parole eligibility~~ *An act*
13 *relating to parole eligibility*

14 It is hereby enacted by the General Assembly of the State of Vermont:

15 ~~Sec. 1. 13 V.S.A. chapter 221, subchapter 5 is added to read:~~

16 Subchapter 5. Petition for Compassionate Release

17 § 7141. PETITION

18 An inmate who is serving a sentence of incarceration in the custody of the
19 Commissioner of Corrections may petition the Superior Court of the county
20 where the sentence was imposed for an order granting compassionate release.

21 The petition may be informal, but shall be in writing, and shall include the

1 ~~inmate's name, offense, date of sentencing, sentence, and an explanation of~~
2 why compassionate release is appropriate for the inmate and how the inmate
3 satisfies the factors set forth in section 7142 of this subchapter. The inmate
4 shall serve a copy of his or her petition upon the superintendent of the facility
5 in which he or she is incarcerated.

6 § 7142. NOTICE, HEARING, AND DECISION

7 (a) Unless the petition and the files and records of the case conclusively
8 show that the inmate is not entitled to relief, the court shall cause notice to be
9 served upon the Office of the Attorney General and the State's Attorney. The
10 Office of the Attorney General and a State's Attorney who receive notice may
11 elect to appear as parties.

12 (b) The court may decide the petition upon the files and records of the case
13 or may grant a hearing. If the court grants a hearing, the court may entertain
14 and decide the petition without requiring the inmate to attend the hearing.

15 (c) The court shall grant the petition if it finds by a preponderance of the
16 evidence that:

17 (1) the inmate:

18 (A) has been diagnosed with a terminal, incurable disease and has a
19 life expectancy of 18 months or less;

20 (B) has been diagnosed with an incurable and progressive illness or
21 has suffered a debilitating injury and:

1 ~~(i) cannot care for himself or herself and is confined to a bed or~~

2 ~~chair; or~~

3 ~~(ii) can only care for himself or herself on a limited basis and is~~
4 ~~confined to a bed or chair for at least 50 percent of his or her waking hours; or~~

5 ~~(C) is 65 years of age or older and:~~

6 ~~(i) suffers from a chronic or serious medical condition; or~~

7 ~~(ii) is experiencing deteriorating mental or physical health that~~
8 ~~diminishes his or her ability to function in a correctional facility;~~

9 ~~(2) the inmate is not a danger to the community and his or her release~~
10 ~~will not endanger public safety; and~~

11 ~~(3) compassionate release is appropriate.~~

12 ~~(d) If the court grants the petition, it may reduce the term of imprisonment~~
13 ~~and may impose a term of probation or supervised release with or without~~
14 ~~conditions that does not exceed the original term of imprisonment.~~

15 § 7143. APPEALS

16 An appeal may be taken to the Supreme Court from the order entered on the
17 petition.

18 § 7144. ASSIGNMENT OF COUNSEL

19 The court may appoint counsel if, financially, the inmate is unable to
20 employ counsel, and may order that all necessary costs and expenses, including
21 court costs, stenographic services, printing, and reasonable compensation for

1 ~~legal services, be paid by the State from the appropriation to the court where~~
2 the sentence was imposed. On appeal, the Supreme Court may make a similar
3 order.

4 Sec. 2. 28 V.S.A. § 501 is amended to read:

5 § 501. ELIGIBILITY FOR PAROLE CONSIDERATION

6 (a) An inmate who is serving a sentence of imprisonment shall be eligible
7 for parole ~~consideration~~ as follows:

8 (1) If the inmate's sentence has no minimum term or a zero minimum
9 term, the inmate shall be eligible for parole consideration within 12 months
10 after commitment to a correctional facility.

11 (2) If the inmate's sentence has a minimum term, the inmate shall be
12 ~~eligible for parole consideration~~ paroled after the inmate has served the
13 minimum term of the sentence unless the inmate has programming
14 requirements that have not been fulfilled or has received a major disciplinary
15 report within the previous 12 months.

16 (3) If the inmate has a serious medical condition that requires regular
17 hospital visits and the inmate is designated low-risk, the inmate shall be
18 eligible for parole.

19 (4) If the inmate is 55 years of age or older but under 65 years of age, is
20 designated low-risk, and has served ten years but not served the minimum of
21 the sentence, the inmate shall be paroled, unless the inmate has programming

1 ~~requirements that have not been fulfilled or has received a major disciplinary~~
2 ~~report within the previous 12 months.~~

3 ~~(5) If the inmate is 65 years of age or older, has served five years but not~~
4 ~~served the minimum term of the sentence, and is designated low-risk, the~~
5 ~~inmate shall be paroled, unless the inmate has programming requirements that~~
6 ~~have not been fulfilled or has received a major disciplinary report within the~~
7 ~~previous 12 months.~~

8 ~~(b) As used in this section, "major disciplinary report" includes violations~~
9 ~~for violent acts or serious threats to institutional security or personal safety and~~
10 ~~does not include drug possession.~~

11 Sec. 3. EFFECTIVE DATE

12 ~~This act shall take effect on July 1, 2016.~~

Sec. 1. 28 V.S.A. § 501 is amended to read:

§ 501. ELIGIBILITY FOR PAROLE CONSIDERATION

*(a) An inmate who is serving a sentence of imprisonment shall be eligible
for parole consideration as follows:*

*(1) If the inmate's sentence has no minimum term or a zero minimum
term, the inmate shall be eligible for parole consideration within 12 months
after commitment to a correctional facility.*

(2) If the inmate's sentence has a minimum term, the inmate shall be eligible for parole consideration after the inmate has served the minimum term of the sentence.

(3) Notwithstanding subsection 502a(a) of this title, if the inmate is 55 years of age or older but under 65 years of age, and has served ten years but not served the minimum of the sentence, the inmate shall be eligible for parole consideration, unless the inmate has programming requirements that have not been fulfilled.

(4) Notwithstanding subsection 502a(a) of this title, if the inmate is 65 years of age or older, and has served five years but not served the minimum of the sentence, the inmate shall be eligible for parole consideration, unless the inmate has programming requirements that have not been fulfilled.

Sec. 2. 28 V.S.A. § 502a is amended to read:

§ 502a. RELEASE ON PAROLE

(a) No inmate serving a sentence with a minimum term shall be released on parole until the inmate has served the minimum term of the sentence, less any reductions for good behavior.

(b) An inmate shall be released on parole by the written order of the Parole Board if the Board determines:

(1) the inmate is eligible for parole;

(2) *there is a reasonable probability that the inmate can be released without detriment to the community or to the inmate; and*

(3) *the inmate is willing and capable of fulfilling the obligations of a law-abiding citizen.*

(c) *A parole shall be ordered only for the best interest of the community and of the inmate, and shall not be regarded as an award of clemency, a reduction of sentence, or a conditional pardon.*

(d) *Notwithstanding subsection (a) of this section, or any other provision of law to the contrary, any inmate who is serving a sentence, including an inmate who has not yet served the minimum term of the sentence, who is diagnosed as having a terminal or ~~debilitating~~ serious medical condition so as to render the inmate unlikely to be physically capable of presenting a danger to society, may be released on medical parole to a hospital, hospice, other licensed inpatient facility, or suitable housing accommodation as specified by the parole board. Provided the inmate has authorized the release of his or her personal health information, the ~~The~~ *Department shall promptly notify the parole board upon receipt of medical information of an inmate's diagnosis of a terminal or ~~debilitating~~ serious medical condition.**

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2016.