

HOUSE No. 3494

The Commonwealth of Massachusetts

PRESENTED BY:

Claire D. Cronin and Hannah Kane

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to supervised medical parole of terminal and extraordinarily incapacitated inmates.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Claire D. Cronin</i>	<i>11th Plymouth</i>
<i>Hannah Kane</i>	<i>11th Worcester</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>Timothy R. Whelan</i>	<i>1st Barnstable</i>
<i>Ruth B. Balser</i>	<i>12th Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>David F. DeCoste</i>	<i>5th Plymouth</i>
<i>Daniel Cullinane</i>	<i>12th Suffolk</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>
<i>Susan Williams Gifford</i>	<i>2nd Plymouth</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>

<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>
<i>Kate D. Campanale</i>	<i>17th Worcester</i>
<i>Linda Dean Campbell</i>	<i>15th Essex</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>Gerard Cassidy</i>	<i>9th Plymouth</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>
<i>Carlos González</i>	<i>10th Hampden</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Brian Murray</i>	<i>10th Worcester</i>
<i>Shaunna L. O'Connell</i>	<i>3rd Bristol</i>
<i>Richard J. Ross</i>	<i>Norfolk, Bristol and Middlesex</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>
<i>Jeffrey Sánchez</i>	<i>15th Suffolk</i>
<i>Paul Tucker</i>	<i>7th Essex</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>
<i>Bud Williams</i>	<i>11th Hampden</i>

HOUSE No. 3494

By Representatives Cronin of Easton and Kane of Shrewsbury, a petition (accompanied by bill, House, No. 3494) of Claire D. Cronin and others relative to supervised medical parole of terminal and extraordinarily incapacitated inmates. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relative to supervised medical parole of terminal and extraordinarily incapacitated inmates.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 127 of the General Laws is hereby amended by inserting
2 after section 119 the following section:-

3 Section 119A. (a) As used in this section, the following words shall have the
4 following meanings:-

5 “Supervised conditional medical parole plan”, a comprehensive written medical
6 and psychosocial care plan that is specific to the prisoner and shall include, but not be limited to:

7 (i) the proposed course of treatment; (ii) the proposed site for treatment and post-treatment care;

8 (iii) documentation that medical providers qualified to provide the medical services identified in

9 the supervised conditional medical parole plan are prepared to provide those services; and (iv)

10 the financial program in place to cover the cost of the plan for the duration of the supervised

11 conditional medical parole, which shall include eligibility for enrollment in commercial

12 insurance, Medicare or Medicaid or access to other adequate financial resources for the duration
13 of the supervised conditional medical parole.

14 “Permanent incapacitation”, as determined by a licensed physician, an
15 irreversible physical incapacitation as a result of a medical condition that was unknown at the
16 time of sentencing, diagnosed after the time of sentencing or, since the time of sentencing, has
17 progressed such that the prisoner does not pose a public safety risk.

18 “Terminal illness”, an incurable condition caused by illness or disease that was
19 unknown at the time of sentencing, diagnosed after the time of sentencing or, since the time of
20 sentencing, has progressed, that will likely cause the death of the prisoner within 12 months and
21 that is so debilitating that the prisoner does not pose a public safety risk.

22 (b) There shall be in the department of correction, but not subject to its jurisdiction, an
23 independent medical parole board, consisting of five members: the chair of the parole board, one
24 retired judge from either the Boston municipal court, district court, or superior court designated
25 by the chief justice of the trial courts, two medical doctors designated by the Massachusetts
26 Medical Society, and one person designated by the governor. The governor’s designee shall
27 have a graduate degree from an accredited school and at least five years of training and
28 experience in one of the following fields – public health, probation, corrections, law, criminal
29 justice, psychiatry, psychology, sociology, or social work.

30 Members of the board shall be appointed for terms of six years; provided however, that
31 the initial terms of the first members of the board shall be staggered so three members including
32 at least one of the medical doctors, serve terms of six years and two members serve initial terms
33 of three years. No member shall serve more than two full six-year terms. The term of the parole

34 board chair shall end when he or she is no longer in that position and his or her successor shall be
35 appointed to the medical parole board. Responsibility for chairing medical parole hearings shall
36 rotate among the members on an annual basis, with no one member serving as chair more than
37 once in five years. In the case of the absence or disability of the chair during a hearing, the board
38 may vote to designate one of the members to act as chair during such absence or disability.

39 Members of the board shall serve without compensation, but each member shall be
40 reimbursed by the commonwealth for all reasonable expenses incurred in the performance of
41 official duties.

42 (b) Except as otherwise provided in this section and notwithstanding any general
43 or special law to the contrary, a prisoner may be eligible for supervised conditional medical
44 parole due to a terminal illness or permanent incapacitation under the procedures described in
45 subsections (c) and (d).

46 (c) The superintendent of a correctional facility shall consider a prisoner for
47 supervised conditional medical parole upon a written request for supervised conditional medical
48 parole filed by the prisoner, the prisoner's attorney, the prisoner's next of kin, the
49 commissioner's medical provider or a member of the correctional staff. The superintendent shall
50 review the request for consideration and make a recommendation to the commissioner within 21
51 days of receipt of the request. If the superintendent recommends supervised conditional medical
52 parole, the commissioner shall petition the medical parole board within 10 days of receipt of the
53 recommendation for an order permitting the prisoner to be medically paroled. The commissioner
54 shall notify, in writing, the district attorney and the prisoner, the prisoner's attorney, the
55 prisoner's next of kin or a member of the correctional staff requesting the medical parole of a

56 prisoner for supervised conditional medical parole and, if applicable under chapter 258B, the
57 victim or the victim's family, that the prisoner is being considered for supervised conditional
58 medical parole. The parties receiving the notice shall have an opportunity to be heard through a
59 written or oral statement as to the medical parole of the prisoner. The commissioner shall file an
60 affidavit with the petition confirming that the notice has been provided. The commissioner shall
61 file with the petition a supervised conditional medical parole plan and an assessment of the
62 prisoner's medical and psychosocial condition and the risk the prisoner poses to society,
63 including:

64 (i) a written diagnosis by a physician licensed to practice medicine in
65 the commonwealth under section 2 of chapter 112 that includes: (A) a description of the terminal
66 illness or permanent incapacitation; and (B) a prognosis concerning the likelihood of recovery
67 from the terminal illness or permanent incapacitation; provided, however, that the physician shall
68 be employed by the department or shall be a contract provider used by the department for the
69 evaluation and recommended treatment of prisoners; and

70 (ii) an assessment of the risk for violence and recidivism that the
71 prisoner poses to society.

72 If the superintendent denies the request for supervised conditional medical
73 parole, the superintendent shall provide to the prisoner or the prisoner's attorney, the prisoner's
74 next of kin or a member of the correctional staff requesting the supervised conditional medical
75 parole on behalf of the prisoner a statement, in writing, of the reason for the denial. A prisoner
76 electing to appeal a denial made by the superintendent shall file an appeal with the commissioner
77 within 30 days of receiving notice of the denial.

78 (d) A sheriff shall consider a prisoner for supervised conditional medical parole
79 upon a written request for supervised conditional medical parole filed by the prisoner, the
80 prisoner's attorney, the prisoner's next of kin, the sheriff's medical provider or a member of the
81 correctional staff. The sheriff shall review the request within 21 days of receipt of the request. If,
82 after investigation of the request, the sheriff determines that the request should be approved, the
83 sheriff shall petition the medical parole board for an order permitting the prisoner to be
84 medically paroled within 10 days of receipt of the recommendation. The sheriff shall notify, in
85 writing, the district attorney and the prisoner, the prisoner's attorney, the prisoner's next of kin or
86 a member of the correctional staff requesting the supervised conditional medical parole and, if
87 applicable under chapter 258B, the victim or the victim's family, that the prisoner is being
88 considered for supervised conditional medical parole subject to this section. The parties
89 receiving the notice shall have an opportunity to be heard through a written or oral statement as
90 to the medical parole of the prisoner. The sheriff shall file an affidavit with the petition
91 confirming that the notice has been provided. The sheriff shall file with the petition a conditional
92 medical parole plan and an assessment of the prisoner's medical and psychosocial condition and
93 the risk the prisoner poses to society, including:

94 (i) a written diagnosis by a physician licensed to practice medicine in
95 the commonwealth under section 2 of chapter 112 that includes: (A) a description of the terminal
96 illness or permanent incapacitation; and (B) a prognosis concerning the likelihood of recovery
97 from the terminal illness or permanent incapacitation; provided, however, that the physician shall
98 be employed by the department or sheriff, or shall be employed by a hospital or medical facility
99 used by the department or sheriff for the medical treatment of prisoners; and

100 (ii) an assessment of the risk for violence and recidivism that the
101 prisoner poses to society.

102 If the sheriff denies the request for conditional medical parole, the sheriff shall
103 provide to the prisoner or the prisoner's attorney, the prisoner's next of kin or a member of the
104 correctional staff requesting the conditional medical parole on behalf of the prisoner a statement,
105 in writing, of the reason for the denial. A prisoner electing to appeal a denial made by the sheriff
106 shall file an appeal with the secretary within 30 days of receiving notice of the denial.

107 (e) The medical parole board shall conduct a hearing not later than 15 days after
108 its receipt of the commissioner's or sheriff's petition and shall issue a written decision within 30
109 days of receipt of the commissioner's or sheriff's petition which shall be accompanied by a
110 statement of reasons for the decision, including a determination of each issue of fact or law
111 necessary to the decision. The medical parole board shall, upon making a determination that a
112 prisoner is terminally ill or permanently incapacitated, release a prisoner under supervised
113 conditional medical parole. A prisoner granted medical parole under this section shall be under
114 the jurisdiction, supervision and control of the medical parole board. The medical parole board
115 shall impose terms and conditions for conditional medical parole that shall apply through the
116 date upon which the prisoner's sentence would have expired. These conditions shall require, but
117 shall not be limited to:

118 (i) the medically paroled prisoner's care be consistent with the care
119 specified in the conditional medical parole plan approved by the board;

120 (ii) the medically paroled prisoner cooperate with and comply with the
121 prescribed conditional medical parole plan and with reasonable requirements of medical
122 providers to whom the prisoner is to be referred for continued treatment;

123 (iii) the medically paroled prisoner comply with conditions of medical
124 parole set by the medical parole board.

125 If the prisoner eligible for conditional medical parole pursuant to this section is
126 convicted and serving a sentence pursuant to section 1 of chapter 265, the full membership of the
127 medical parole board shall conduct the hearing unless a member of the board is determined to be
128 unavailable. For the purposes of this section, the term “unavailable” shall mean that a board
129 member has a conflict of interest to the extent that the board member cannot render a fair and
130 impartial decision or that the appearance of a board member would be unduly burdensome
131 because of illness, incapacitation or other circumstance. Whether a member is unavailable under
132 this section shall be determined by the chair. Board members shall appear unless the chair
133 determines them to be unavailable. A medical parole hearing shall not proceed for a prisoner
134 serving a sentence pursuant to said section 1 of said chapter 265 unless a majority of the board is
135 present at the public hearing. For prisoners convicted and serving a sentence pursuant to said
136 section 1 of said chapter 265, a vote of 2/3 of the members present is required to grant
137 conditional medical parole. The medical parole board shall provide reasonable accommodations
138 for prisoners appearing before it for a conditional medical parole hearing under this section
139 including, but not limited to, video conferencing when appropriate.

140 Not less than 24 hours before the date of a prisoner’s release due to supervised
141 conditional medical parole, the medical parole board shall notify, in writing, the district attorney,

142 the department of state police, the police department in the city or town in which the medically
143 paroled prisoner shall reside and, if applicable under chapter 258B, the victim or the victim's
144 family of the terms and conditions of the prisoner's medical parole.

145 The medical parole board may revise, alter or amend the terms and conditions of
146 a supervised conditional medical parole at any time. A parole officer may promptly arrest a
147 medical parolee and bring the medical parolee before the board for a medical parole violation
148 hearing if the medical parole board receives credible information that a prisoner has failed to
149 comply with a reasonable condition set upon the medical parolee's release or upon discovery that
150 the terminal illness or permanent incapacitation has improved to the extent that the medical
151 parolee would no longer be eligible for supervised conditional medical parole under this section.
152 If the board subsequently determines that the medical parolee violated a condition of supervised
153 conditional medical parole or that the terminal illness or permanent incapacitation has improved
154 to the extent that the medical parolee would no longer be eligible for supervised conditional
155 medical parole pursuant to this section, the medical parolee shall resume serving the balance of
156 the sentence with credit given only for the duration of the medical parolee's supervised
157 conditional medical parole served in compliance with all reasonable conditions in this
158 subsection. Revocation of a medical parolee's supervised conditional medical parole due to a
159 change in the prisoner's medical condition shall not preclude a medical parolee's eligibility for
160 supervised conditional medical parole in the future or for another form of release permitted by
161 law.

162 (f) A prisoner, commissioner or sheriff aggrieved by a decision denying
163 supervised conditional medical parole made under this section may petition for relief in the
164 superior court in the county of the correctional facility where the prisoner resides or in Suffolk

165 county for a de novo review of the denial. The petition shall be filed not later than 30 days after
166 receipt of notice of the decision and shall be served on the parole board not later than 7 days after
167 receipt of notice of the decision. The medical parole board shall file its answer, which shall
168 include a copy of its statement of reasons, not later than 14 days after service of the complaint.
169 The court may affirm the decision of the board, remand the matter for further proceedings before
170 the board or set aside a decision of the board if it finds by a preponderance of the evidence that
171 the prisoner is terminally ill or permanently incapacitated. The court shall conduct an evidentiary
172 hearing on the petition not later than 21 days after filing of the answer and shall issue its decision
173 not later than 14 days after completion of the hearing unless the court orders otherwise upon a
174 finding of good cause.

175 Affirmation of the medical parole board's denial of supervised conditional
176 medical parole shall not affect a prisoner's eligibility for any other form of release permitted by
177 law.

178 A decision by the court pursuant to this section shall be final, subject to appeal in
179 the manner provided for appeal of civil proceedings; provided, however, that the decision shall
180 not preclude a prisoner's eligibility for supervised conditional medical parole in the future.

181 (g) The commissioner of the department of corrections and the Massachusetts
182 sheriffs association shall promulgate rules, regulations, policies, and procedures necessary to
183 implement this section.

184 (h) The commissioner of the department of corrections, sheriffs, and the
185 secretary of the executive office of public safety and security shall educate, inform and train

186 employees about this section and shall provide those employees with appropriate resources and
187 services to implement this section.

188 (i) The commissioner of the department of corrections, Massachusetts sheriffs
189 association, and the medical parole board shall together file an annual report not later than March
190 1 with the clerks of the senate and the house of representatives, the chairs of the senate and house
191 committees on ways and means and the senate and house chairs of the joint committee on the
192 judiciary detailing: (i) each prisoner in the custody of the department who is receiving treatment
193 for a terminal illness and each prisoner in the custody of the department who is receiving
194 treatment for a permanent incapacitation, including the race and ethnicity of the prisoner, the
195 offense for which the prisoner was sentenced and a detailed description of the prisoner's physical
196 and mental condition; provided, however, that identifying information shall be withheld from the
197 report; (ii) the number of prisoners in the custody of the department or the sheriffs who applied
198 for supervised conditional medical parole under subsections (c), (d), and (e) and the race and
199 ethnicity of each applicant; (iii) the number, race and ethnicity of prisoners who have been
200 granted supervised conditional medical parole for the prior fiscal year and total to date; (iv) the
201 nature of the illness of the applicants for supervised conditional medical parole; (v) the counties
202 to which the prisoners have been medically paroled; (vi) the nature of the placement pursuant to
203 the supervised conditional medical parole plan; (vii) the categories of reasons for denial for
204 prisoners who have been denied supervised conditional medical parole; (viii) the number of
205 prisoners petitioning for supervised conditional medical parole on more than 1 occasion; (ix) the
206 number of prisoners medically paroled who have been returned to the custody of the department
207 and the reasons for those returns; and (x) the number of petitions for relief sought under
208 subsection (f).

209 SECTION 2. The commissioner of the department of corrections and the
210 Massachusetts sheriffs association shall promulgate rules, regulations, policies, and procedures
211 necessary to implement section 119A of chapter 127 of the General Laws not later than 6 months
212 after the effective date of this act.