
DIGEST

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HB 728 Original

2022 Regular Session

Duplessis

Abstract: Provides relative to eligibility for medical release.

Present law (R.S. 15:574.4) provides that a person otherwise eligible for parole shall be eligible for parole consideration upon serving 25% of the sentence imposed.

Present law does not apply to any person whose instant offense is a crime of violence as defined in present law (R.S. 14:2(B)), a sex offense as defined in present law (R.S. 15:541), or any offense which would constitute a crime of violence or sex offense as defined in present law, regardless of the date of conviction. Applies to persons convicted of offenses prior to and on or after Nov. 1, 2017.

Proposed law retains present law.

Present law provides that a person committed to the Dept. of Public Safety and Corrections for a term or terms of imprisonment with or without benefit of parole for 30 years or more shall be eligible for parole consideration upon serving at least 20 years of the term or terms of imprisonment in actual custody and upon reaching the age of 45.

Present law does not apply to a person serving a life sentence unless the sentence has been commuted to a fixed term of years.

Proposed law retains present law.

Present law does not apply to any person who has been convicted of a crime of violence as defined in present law (R.S. 14:2(B)) or a sex offense as defined in present law (R.S. 15:541) when the offense was committed on or after Aug. 1, 2014.

Proposed law repeals present law.

Present law provides that a person committed to the Dept. of Public Safety and Corrections for a term or terms of imprisonment with or without benefit of parole who has served at least 10 years of the term or terms of imprisonment in actual custody shall be eligible for parole consideration upon reaching the age of 60 years if all of the following conditions are met:

- (1) The offender has not been convicted of a crime of violence as defined in present law (R.S. 14:2(B)) or a sex offense as defined in present law (R.S. 15:541), or convicted of an offense

which would constitute a crime of violence or sex offense as defined in present law, regardless of the date of conviction.

- (2) The offender has not committed any major disciplinary offenses in 12 consecutive months prior to the parole hearing date. A major disciplinary offense is an offense identified as a Schedule B offense by the Dept. of Public Safety and Corrections in the Disciplinary Rules and Procedures for Adult Offenders.
- (3) The offender has completed the mandatory minimum of 100 hours of prerelease programming in accordance with the provisions of present law (R.S. 15:827.1) if such programming is available at the facility where the offender is incarcerated.
- (4) The offender has completed substance abuse treatment as applicable.
- (5) The offender has obtained a GED credential, unless the offender has previously obtained a high school diploma or is deemed by a certified educator as being incapable of obtaining a GED credential due to a learning disability. If the offender is deemed incapable of obtaining a GED credential, the offender shall complete at least one of the following: a literacy program, an adult basic education program, or a job-skills training program.
- (6) The offender has obtained a low-risk level designation determined by a validated risk assessment instrument approved by the secretary of the Dept. of Public Safety and Corrections.

Proposed law amends present law to change a person's age requirement for parole eligibility from 60 years to 55 years when a person who has been committed to the Dept. of Public Safety and Corrections for a term or terms of imprisonment with or without benefit of parole has served at least 10 years of the term or terms of imprisonment in actual custody.

Proposed law further amends present law to remove the requirement that the offender not be convicted of a crime of violence as defined in present law (R.S. 14:2(B)) or a sex offense as defined in present law (R.S. 15:541), or convicted of an offense which would constitute a crime of violence or sex offense as defined in present law, regardless of the date of conviction.

Present law (R.S. 15:574.20) provides for a medical parole program and medical treatment furlough.

Proposed law amends present law to change a term name from medical parole to medical release throughout present law. Further amends present law to remove all references to medical treatment furlough in present law.

Present law provides that any person sentenced to the custody of the Dept. of Public Safety and Corrections may, upon referral by the department, be considered for medical parole or medical treatment furlough by the committee on parole. Provides that consideration for medical parole or medical treatment furlough pursuant to present law shall be in addition to any other parole for which an inmate may be eligible.

Proposed law amends present law to provide that a person may refer himself to the department for consideration, or may have an attorney, family member, treating physician, parole board member, or other patient advocate submit a referral.

Proposed law provides that the Dept. of Public Safety and Corrections shall work with the La. Dept. of Health to establish a referral process that can be initiated by community healthcare providers at all hospitals or facilities that the Dept. of Public Safety and Corrections and La. Dept. of Health contract with.

Proposed law provides that the referral system shall be incorporated into a correctional health electronic records system that is compatible with major hospitals and health providers outside the correctional institutions and other electronic health records systems, and hospital staff shall be trained on the eligibility and application procedure for medical release no later than Jan. 1, 2023.

Proposed law provides that the Dept. of Public Safety and Corrections shall establish a standardized process for other referrals. Provides that the department shall create a resource explaining the processes of medical release, eligibility criteria, and how to initiate an application. Provides for availability of resources and acceptance of applications.

Proposed law provides that the Dept. of Public Safety and Corrections shall provide information and applications to all correctional medical care providers and make the information and applications available to incarcerated patients when they enter medical care units. Provides that this process shall be established no later than Jan. 1, 2023.

Proposed law provides for notice to be sent from the Dept. of Public Safety and Corrections to the La. Dept. of Health, the Medicaid Pre-release Enrollment Program, and any other community partners designated by the La. Dept. of Health once the initiation of the consideration process for medical release has begun.

Present law provides that the committee on parole shall establish the medical parole program to be administered by the Dept. of Public Safety and Corrections. Provides that an offender eligible for consideration for release under the program shall be any offender who, because of an existing medical or physical condition, is determined by the department to be within one of the following designations of "permanently disabled offender" or "terminally ill offender".

Proposed law defines "permanently disabled offender", "terminally ill offender", and "terminally ill".

Proposed law amends present law to provide a date of Jan. 1, 2023, for the committee on medical release to establish the medical release program administered by the Dept. of Public Safety and Corrections.

Proposed law amends present law to rename a term from "permanently disabled offender" to "completely disabled offender". Removes the terms "terminally ill offender" and "terminally ill".

Proposed law provides definitions for "dementia patient", "irreversibly ill", "irreversibly ill offender",

and "limited-mobility offender".

Present law provides that medical parole shall not be available to any offender serving a sentence for a conviction of first degree murder (R.S. 14:30) or second degree murder (R.S. 14:30.1) or an offender who is awaiting execution.

Proposed law repeals present law.

Present law provides for the establishment of a medical treatment furlough program to be administered by the Dept. of Public Safety and Corrections for the purpose of utilizing off-site medical facilities for an eligible offender's medical treatment.

Proposed law amends present law to provide for the establishment of the committee on medical release. Provides that the committee shall be comprised of five individuals appointed by the governor to consider medical release and may be comprised of members of both the pardon and parole board and community physicians with experience treating Medicaid-eligible populations.

Proposed law provides that the committee shall be established no later than Jan. 1, 2023, and shall meet at least once a month to consider pending applications for medical release.

Present law defines "off-site medical facility" and "limited-mobility offender".

Present law provides that an offender eligible for consideration for release under the medical treatment furlough program shall be any offender who is ineligible for release on medical parole pursuant to present law and is determined by the department to be a limited-mobility offender.

Present law provides that the committee on parole may authorize the release of an eligible offender on medical treatment furlough when all of the following conditions are met:

- (1) Placement is secured in an acute care hospital, nursing home, or other appropriate medical facility able to meet the offender's medical and treatment needs.
- (2) All monitoring, security, and supervision requirements that the committee deems necessary are secured by the division of probation and parole.
- (3) The committee determines that the offender does not present a substantial flight risk.

Present law provides that a medical treatment furlough shall not be available to any offender serving a sentence for a conviction of first degree murder (R.S. 14:30) or an offender who is awaiting execution.

Proposed law repeals present law.

Present law provide that no offender shall be recommended for parole or medical treatment furlough pursuant to present law by the department until full consideration has been given to the offender's

crime and criminal history, length of time served in custody, institutional conduct, an indication that the offender represents a low risk to himself or society, and a medical assessment of the offender's condition. Provides that in the assessment of risk, emphasis shall be given to the offender's medical condition and how this relates to his overall risk to society.

Proposed law amends present law to include age, mobility, quality of life, progression of disease or disability, and reentry support, as factors to be considered by the department. Provides that if a person's medical condition qualifies him for medical release, there shall be a presumption he will not be a risk to society unless otherwise rebutted with evidence from the past five years.

Present law provides that neither the department nor the warden of the correctional facility shall recommend that the offender's sentence be commuted for any medical reasons contemplated by present law.

Proposed law repeals present law.

Present law provides that the authority to grant medical parole or medical treatment furlough pursuant to present law shall rest solely with the committee on parole, and the committee shall establish additional conditions of the parole or medical treatment furlough in accordance with present law.

Proposed law amends present law to provide that the authority of the secretary of the Dept. of Public Safety and Corrections as well as the Governor's Office to grant compassionate release shall not be affected by present law.

Present law provides that the Dept. of Public Safety and Corrections shall identify those offenders who may be eligible for medical parole or medical treatment furlough based upon available medical information.

Proposed law amends present law to provide for the identification of eligible offenders on a monthly basis.

Present law provides that the committee on parole shall determine the risk to public safety and shall grant medical parole or medical treatment furlough only after determining that the offender does not pose a threat to public safety and only after the offender, as a condition of the medical parole or medical treatment furlough, waives his right to medical confidentiality and privacy as to the notice requirements in present law.

Proposed law amends present law to provide that if a person's medical condition qualifies them for medical release, there shall be a presumption he will not be a risk to society unless otherwise rebutted with evidence from the past five years.

Present law provides that an offender who is denied medical parole or medical treatment furlough may apply for a rehearing within the time frame applicable to a denial of parole under any other provision of present law.

Proposed law amends present law to provide that a denied offender may apply for a rehearing to be rescheduled within 30 days.

Present law provides that within seven business days of the decision of the committee on parole to grant medical parole or medical treatment furlough to an offender, the department shall notify any off-site medical facility designated for an eligible offender's medical treatment of the decision.

Proposed law amends present law to provide that the department shall notify any off-site medical facility designated for an eligible offender's medical treatment of the decision through Medicaid.

Present law provides that the off-site medical facility shall, not less than 14 days before the offender begins treatment at the facility, provide notice to its patients or residents and each patient's or resident's next of kin, curator, tutor, or person having power of attorney that the offender will be receiving treatment at that facility

Proposed law amends present law to change the days required for notice from 14 to five.

Present law provides for a revoke of medical parole or medical treatment furlough and a return to custody if it is discovered through the supervision of the offender released on medical parole or medical treatment furlough that his condition has improved such that he would not then be eligible for medical parole or medical treatment furlough.

Proposed law repeals present law.

Present law provides for the promulgation of rules.

Proposed law retains present law and provides that the committee shall make a determination on an application for medical parole release no later than 60 days from the initiation of an application. Provides that the committee will ensure that victim notification is made no later than 30 days before a scheduled hearing and that victim testimony may be offered in-person or via letter or video.

Proposed law provides that the Dept. of Public Safety and Corrections shall collect and include data on the medical release program, including number of referrals, number of complete applications reviewed by the board, number of denials, and number of revocations in the department's annual briefing report.

(Amends R.S. 15.574.4(A)(4) and 15:574.20)