STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

RELATING TO CRIMINALS - CORRECTIONAL INSTITUTIONS - PAROLE, MEDICAL PAROLE, COMMUNITY CONFINEMENT, AND CORRECTIONAL IMPACTS

Introduced By: Senators McCaffrey, Lynch Prata, Lombardi, Conley, and Metts

Date Introduced: January 11, 2017

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

SECTION 1. Sections 13-8-14.1 and 13-8-19 of the General Laws in Chapter 13-8 entitled "Parole" are hereby amended to read as follows:


(a) At least once each calendar year the parole board shall adopt standards to be utilized by the board in evaluating applications for parole of persons convicted of a criminal offense and sentenced to the adult correctional institutions. These standards shall establish, with the range of parole eligibility set by statute, the portion of a sentence which should be served depending on the likelihood of recidivism as determined by a risk assessment, and shall serve as guidelines for the board in making individual parole determinations.

(b) The board shall consider the applicable standard prior to rendering a decision on a parole application, and may make a determination at variance with that standard only upon a finding that the determination is warranted by individualized factors, such as the character, and criminal record, criminal history, and attitudes of the applicant that bear on the likelihood to reoffend, the nature and circumstances of the offense or offenses for which the applicant was sentenced, the conduct of the applicant while incarcerated, including meaningful participation in a risk-reducing program and substantial compliance with the rules of the institution, and risk-reducing behavior and the criteria set forth in § 13-8-14. "Risk-reducing program" means a program that adheres to those elements that are shown in research to reduce recidivism.
(c) In each case where the board grants an application prior to the time set by the
applicable standard or denies an application on or after the time set by that standard, the board
shall set forth in writing the rationale for its determination.

13-8-19. Arrest and return to institution on revocation of parole.

(a) Whenever the permit of a prisoner is revoked, in accordance with the provisions of §
13-8-18.1 the parole board shall order the prisoner to be returned to the adult correctional
institutions or to the women's division of the adult correctional institutions, as the case may be, to
serve the remainder of the prisoner's original sentence according to the terms of that sentence.

(b) The time between the release of the prisoner under the permit and the prisoner's return
to the adult correctional institutions or the women's division of the adult correctional institutions
under order of the board shall not be considered as any part of the prisoner's original
sentence. The parole board may choose to credit or revoke all or part of the time while released
under the permit from the original sentence, taking into consideration the seriousness of the
violation that prompted revocation. The board shall adopt standards to be utilized in determining
whether to credit all or part of the time served under the permit from the original sentence.

(c) If a prisoner is at liberty when the prisoner's permit is revoked, the chairperson shall
issue his or her warrant to any officer authorized to serve criminal process to arrest the prisoner
and return the prisoner to the adult correctional institutions or the women's division of the adult
in accordance with the provisions of § 13-8-18.1 as ordered by the board.

(d) Where the prisoner is supervised by the parole board pursuant to a grant of parole by
a state or jurisdiction other than Rhode Island, the parole board shall issue a detention warrant
and order the prisoner committed to the adult correctional institution or the women's division of
the adult correctional institution until the authority from the state or other jurisdiction having
granted the prisoner parole takes custody of the prisoner.

entitled "Medical Parole" are hereby amended to read as follows:


(a) "Permanently physically incapacitated" means suffering from a condition caused by
injury, disease, or illness, or cognitive insult such as dementia or persistent vegetative state,
which, to a reasonable degree of medical certainty, permanently and irreversibly physically
incapacitates the individual to the extent that the individual needs help with most of the activities
that are necessary for independence such as feeding, toileting, dressing, and bathing and
transferring, or no significant physical activity is possible, and the individual is confined to bed or
a wheelchair.
(b) “Terminally ill” means suffering from a condition caused by injury (except self-inflicted injury), disease, or illness which to a reasonable degree of medical certainty is a life-limiting diagnosis that will lead to profound functional, cognitive and/or physical decline, and likely will result in death within sixteen (16) months.

(c) “Severely ill” means suffering from a significant and permanent or chronic physical and/or mental condition that: (1) Requires extensive medical and/or psychiatric treatment with little to no possibility of recovery; and (2) Precludes significant rehabilitation from further incarceration.


(a) The parole board is authorized to grant release of a prisoner, except a prisoner serving life without parole, at any time, who is determined to be terminally ill, severely ill or permanently physically incapacitated within the meaning of § 13-8.1-3. Inmates who are severely ill will only be considered for such release when their treatment causes the state to incur exorbitant expenses as a result of continued and frequent medical treatment during incarceration, as determined by the office of financial resources of the department of corrections.

(b) In order to apply for this relief, the prisoner or their family member or friend, with an attending physician's written approval, or an attending physician, on behalf of the prisoner, shall file an application with the director of the department of corrections. Within seventy-two (72) hours after the filing of any application, the director shall refer the application to the health service unit of the department of corrections for a medical report and a medical discharge plan to be completed within ten (10) days. Upon receipt of the medical discharge plan the director of the department of corrections shall immediately transfer the medical discharge plan together with the application to the parole board for its consideration and decision.

(c) The report shall contain, at a minimum, the following information:

(1) Diagnosis of the prisoner's medical conditions, including related medical history;
(2) Detailed description of the conditions and treatments;
(3) Prognosis, including life expectancy, likelihood of recovery, likelihood of improvement, mobility and trajectory, and rate of debilitation;
(4) Degree of incapacity or disability, including an assessment of whether the prisoner is ambulatory, capable of engaging in any substantial physical activity, ability to independently provide for their daily life activities, and the extent of that activity;
(5) An opinion from the medical director as to whether the person is terminally ill, and if so, the stage of the illness or whether the person is permanently physically incapacitated or severely ill. If the medical director's opinion is that the person is not terminally ill, permanently,
physically incapacitated, or severely ill as defined in § 13-8.1-3, the petition for medical parole shall not be forwarded to the parole board.

(6) In the case of a severely ill inmate, the report shall also contain a determination from the office of financial resources that the inmate's illness causes the state to incur exorbitant expenses as a result of continued and frequent medical treatment during incarceration.

(d) When the director of corrections refers a prisoner to the parole board for medical parole, the director shall provide to the parole board a medical discharge plan which is acceptable to the parole board.

(e) The department of corrections and the parole board shall jointly develop standards for the medical discharge plan that are appropriately adapted to the criminal justice setting. The discharge plan should ensure at the minimum that:

1. An appropriate placement for the prisoner has been secured, including, but not limited to, a hospital, nursing facility, hospice, or family home;
2. A referral has been made for the prisoner to secure a source for payment of the prisoner's medical expenses;
3. A parole officer has been assigned to periodically obtain updates on the prisoner's medical condition to report back to the board.

(f) If the parole board finds from the credible medical evidence that the prisoner is terminally ill, permanently physically incapacitated, or severely ill, the board shall grant release to the prisoner but only after the board also considers whether, in light of the prisoner's medical condition, there is a reasonable probability that the prisoner, if released, will live and remain at liberty without violating the law, and that the release is compatible with the welfare of society and will not so depreciate the seriousness of the crime as to undermine respect for the law. Notwithstanding any other provision of law, release may be granted at any time during the term of a prisoner's sentence.

(g) There shall be a presumption that the opinion of the physician and/or medical director will be accepted. However, the applicant, the physician, the director, or the parole board may request an independent medical evaluation within seven (7) days after the physician's and/or medical director's report is presented. The evaluation shall be completed and a report, containing the information required by subsection (b) of this section, filed with the director and the parole board and a copy sent to the applicant within fourteen (14) days from the date of the request.

(h) Within seven (7) days of receiving the application, the medical report and the discharge plan, the parole board shall determine whether the application, on its face, demonstrates that relief may be warranted. If the face of the application clearly demonstrates that relief is
unwarranted, the board may deny the application without a hearing or further proceedings, and
within seven (7) days shall notify the prisoner in writing of its decision to deny the application, setting forth its factual findings and a brief statement of the reasons for denying release without a hearing. Denial of release does not preclude the prisoner from reapplying for medical parole after the expiration of sixty (60) days. A reapplication under this section must demonstrate a material change in circumstances.

(i) (1) Upon receipt of the application from the director of the department of corrections the parole board shall, except as provided in subsection (h) of this section, set the case for a hearing within thirty (30) days;

(2) Notice of the hearing shall be sent to the prosecutor and the victim(s), if any, of the offense(s) for which the prisoner is incarcerated, and the prosecutor and the victim(s) shall have the right to be heard at the hearing, or in writing, or both;

(3) At the hearing, the prisoner shall be entitled to be represented by an attorney or by the public defender if qualified or other representative.

(j) Within seven (7) days of the hearing, the parole board shall issue a written decision granting or denying medical parole and explaining the reasons for the decision. If the board determines that medical parole is warranted, it shall impose conditions of release, which shall include the following:

(1) Periodic medical examinations;

(2) Periodic reporting to a parole officer, and the reporting interval;

(3) Any other terms or conditions that the board deems necessary; and

(4) In the case of a prisoner who is medically paroled due to being severely ill, the parole board shall require electronic monitoring as a condition of the medical parole, unless the health care plan mandates placement in a medical facility that cannot accommodate the electronic monitoring.

(k) If after release the releasee's condition or circumstances change so that he or she would not then be eligible for medical parole, the parole board may order him or her returned to custody to await a hearing to determine whether his or her release should be revoked. A release may also be revoked for violation of conditions otherwise applicable to parole.

(l) An annual report shall be prepared by the director of corrections for the parole board and the general assembly. The report shall include:

(1) The number of inmates who have applied for medical parole;

(2) The number who have been granted medical parole;

(3) The nature of the illness of the applicants, and the nature of the placement pursuant to
the medical discharge plan;

(4) The categories of reasons for denial for those who have been denied;

(5) The number of releasees on medical parole who have been returned to the custody of
the department of corrections and the reasons for return.

SECTION 3. Section 42-56-20.2 of the General Laws in Chapter 42-56 entitled
"Corrections Department" is hereby amended to read as follows:

42-56-20.2. Community confinement.

(a) Persons subject to this section. Every person who shall have been adjudged guilty of
any crime after trial before a judge, a judge and jury, or before a single judge entertaining the
person's plea of nolo contendere or guilty to an offense ("adjudged person") and every person
sentenced to imprisonment in the adult correctional institutions ("sentenced person") including
those sentenced or imprisoned for civil contempt, and every person awaiting trial at the adult
correctional institutions ("detained person") who meets the criteria set forth in this section shall
be subject to the terms of this section except:

(1) Any person who is unable to demonstrate that a permanent place of residence
("eligible residence") within this state is available to that person; or

(2) Any person who is unable to demonstrate that he or she will be regularly employed,
or enrolled in an educational or vocational training program within this state, and within thirty
(30) days following the institution of community confinement; or

(3) (i) Any adjudged person or sentenced person or detained person who has been
convicted, within the five (5) years next preceding the date of the offense for which he or she is
currently so adjudged or sentenced or detained, of a violent felony.

A "violent felony" as used in this section shall mean any one of the following crimes or
an attempt to commit that crime: murder, manslaughter, sexual assault, mayhem, robbery,
burglary, assault with a dangerous weapon, assault or battery involving serious bodily injury,
arson, breaking and entering into a dwelling, child molestation, kidnapping, DWI resulting in
death or serious injury, driving to endanger resulting in death or serious injury.

(ii) Any person currently adjudged guilty of or sentenced for or detained on any capital
felony; or

(iii) Any person currently adjudged guilty of or sentenced for or detained on a felony
offense involving the use of force or violence against a person or persons.

These shall include, but are not limited to, those offenses listed in subsection (a)(3)(i); or

(iv) Any person currently adjudged guilty, sentenced, or detained for the sale, delivery, or
possession with intent to deliver a controlled substance in violation of § 21-28-4.01(a)(4)(i) or
possession of a certain enumerated quantity of a controlled substance in violation of §§ 21-28-4.01.1 or 21-28-4.01.2.

(v) Any person currently adjudged guilty of or sentenced for or detained on an offense involving the illegal possession of a firearm.

(b) Findings prior to sentencing to community confinement. In the case of adjudged persons, if the judge intends to impose a sentence of community confinement, he or she shall first make specific findings, based on evidence regarding the nature and circumstances of the offense and the personal history, character, record, and propensities of the defendant which are relevant to the sentencing determination, and these findings shall be placed on the record at the time of sentencing. These findings shall include, but are not limited to:

1. A finding that the person does not demonstrate a pattern of behavior indicating a propensity for violent behavior;
2. A finding that the person meets each of the eligibility criteria set forth in subsection (a);
3. A finding that simple probation is not an appropriate sentence;
4. A finding that the interest of justice requires, for specific reasons, a sentence of non-institutional confinement; and
5. A finding that the person will not pose a risk to public safety if placed in community confinement.

The facts supporting these findings shall be placed on the record, and shall be subject to review on appeal.

(c) Community confinement.

(1) There shall be established within the department of corrections, a community confinement program to serve that number of adjudged persons, sentenced persons and detainees, that the director of the department of corrections ("director") shall determine on or before July 1 of each year. Immediately upon that determination, the director shall notify the presiding justice of the superior court of the number of adjudged persons, sentenced persons, and detainees that can be accommodated in the community confinement program for the succeeding twelve (12) months. One-half (1/2) of all persons sentenced to community confinement shall be adjudged persons, and the balance shall be detainees and sentenced persons. The director shall provide to the presiding justice of the superior court and the family court on the first day of each month a report to set forth the number of adjudged persons, sentenced persons and detainees participating in the community confinement program as of each reporting date. Notwithstanding any other provision of this section, if on April 1 of any fiscal year less than one-half (1/2) of all persons
sentenced to community confinement shall be adjudged persons, then those available positions in
the community confinement program may be filled by sentenced persons or detainees in
accordance with the procedures set forth in subdivision (c)(2) of this section.

(2) In the case of inmates other than those classified to community confinement under
subsection (h), the director may make written application ("application") to the sentencing judge
for an order ("order") directing that a sentenced person or detainee be confined within an eligible
residence for a period of time, which in the case of a sentenced person, shall not exceed the term
of imprisonment. This application and order shall contain a recommendation for a program of
supervision and shall contain the findings set forth in subsections (b)(1), (b)(2), (b)(3), (b)(4), and
(b)(5) and facts supporting these findings. The application and order may contain a
recommendation for the use of electronic surveillance or monitoring devices. The hearing on this
application shall be held within ten (10) business days following the filing of this application. If
the sentencing judge is unavailable to hear and consider the application the presiding justice of
the superior court shall designate another judge to do so.

(3) In lieu of any sentence, which may be otherwise imposed upon any person subject to
this section, the sentencing judge may cause an adjudged person to be confined within an eligible
residence for a period of time not to exceed the term of imprisonment otherwise authorized by the
statute the adjudged person has been adjudged guilty of violating.

(4) With authorization by the sentencing judge, or, in the case of sentenced persons
classified to community confinement under subsection (h) by the director of corrections, or in
accordance with the order, persons confined under the provisions of this chapter may be
permitted to exit the eligible residence in order to travel directly to and from their place of
employment or education or training and may be confined in other terms or conditions consistent
with the basic needs of that person that justice may demand, including the right to exit the eligible
residence to which that person is confined for certain enumerated purposes such as religious
observation, medical and dental treatment, participation in an education or vocational training
program, and counseling, all as set forth in the order.

(d) Administration. (1) Community confinement. The supervision of persons confined
under the provisions of this chapter shall be conducted by the director, or his or her designee.

(2) Intense surveillance. The application and order shall prescribe a program of intense
surveillance and supervision by the department of corrections. Persons confined under the
provisions of this section shall be subject to searches of their persons or of their property when
deemed necessary by the director, or his or her designee, in order to ensure the safety of the
community, supervisory personnel, the safety and welfare of that person and/or to ensure
compliance with the terms of that person's program of community confinement; provided, however, that no surveillance, monitoring or search shall be done at manifestly unreasonable times or places nor in a manner or by means that would be manifestly unreasonable under the circumstances then present.

(3) The use of any electronic surveillance or monitoring device which is affixed to the body of the person subject to supervision is expressly prohibited unless set forth in the application and order or, in the case of sentenced persons classified to community confinement under subsection (h), otherwise authorized by the director of corrections.

(4) Regulatory authority. The director shall have full power and authority to enforce any of the provisions of this section by regulation, subject to the provisions of the Administrative Procedures Act, chapter 35 of title 42. Notwithstanding any provision to the contrary, the department of corrections may contract with private agencies to carry out the provisions of this section. The civil liability of those agencies and their employees, acting within the scope of their employment, and carrying out the provision of this section, shall be limited in the same manner and dollar amount as if they were agencies or employees of the state.

(e) Violations. Any person confined pursuant to the provisions of this section, who is found to be a violator of any of the terms and conditions imposed upon him or her according to the order, or in the case of sentenced persons classified to community confinement under subsection (h), otherwise authorized by the director of corrections, this section, or any rules, regulations, or restrictions issued pursuant hereto shall be ineligible for parole, and shall serve the balance of his or her sentence in a classification deemed appropriate by the director. If that conduct constitutes a violation of § 11-25-2, the person, upon conviction, shall be subject to an additional term of imprisonment of not less than one year and not more than twenty (20) years. However, it shall be a defense to any alleged violation that the person was at the time of the violation acting out of a necessary response to an emergency situation. An "emergency situation" shall be construed to mean the avoidance by the defendant of death or of substantial personal injury, as defined above, to him or herself or to others.

(f) Costs. Each person confined according to this section shall reimburse the state for the costs or a reasonable portion thereof incurred by the state relating to the community confinement of those persons. Costs shall be initially imposed by the sentencing judge or in the order and shall be assessed by the director prior to the expiration of that person's sentence. Once assessed, those costs shall become a lawful debt due and owing to the state by that person. Monies received under this section shall be deposited as general funds.

(g) Severability. Every word, phrase, clause, section, subsection, and any of the
provisions of this section are hereby declared to be severable from the whole, and a declaration of
unenforceability or unconstitutionality of any portion of this section, by a judicial court of
competent jurisdiction, shall not affect the portions remaining.

(h) Sentenced persons approaching release. Notwithstanding the provisions set forth
within this section, any sentenced person committed under the direct care, custody, and control of
the adult correctional institutions, who is within six (6) months of the projected good time release
date, provided that the person shall have completed at least one-half (1/2) of the full term of
incarceration, or any person who is sentenced to a term of six (6) months or less of incarceration,
provided that the person shall have completed at least three-fourths (3/4) of the term of
incarceration, may in the discretion of the director of corrections be classified to community
confinement. This provision shall not apply to any person whose current sentence was imposed
upon conviction of murder, first degree sexual assault or first degree child molestation.

(i) Notification to police departments. The director, or his or her designee, shall notify the
appropriate police department when a sentenced, adjudged or detained person has been placed
into community confinement within that department’s jurisdiction. That notice will include the
nature of the offense and the express terms and conditions of that person’s confinement. That
notice shall also be given to the appropriate police department when a person in community
confinement within that department’s jurisdiction is placed in escape status.

(j) No incarceration credit for persons awaiting trial. No detainee shall be given
incarceration credit by the director for time spent in community confinement while awaiting trial.

(k) No confinement in college or university housing facilities. Notwithstanding any
 provision of the general laws to the contrary, no person eligible for community confinement shall
be placed in any college or university housing facility, including, but not limited to, dormitories,
fraternities or sororities. College or university housing facilities shall not be considered an
“eligible residence” for “community confinement.”

(l) A sentencing judge shall have authority to waive overnight stay or incarceration at the
adult correctional institution after the sentencing of community confinement. Such a waiver shall
be binding upon the adult correctional institution and the staff thereof, including, but not limited
to the community confinement program.

SECTION 4. Chapter 42-56 of the General Laws entitled “Corrections Department” is
hereby amended by adding thereto the following section:


(a) The department, in conjunction with the performance management staff at the office
of management and budget, shall monitor the implementation of justice reinvestment policies for
the period from 2017 to 2022, utilizing a benefit-cost model, such as the one developed and
supported by the Pew-MacArthur Results First Initiative, including:

(1) Adoption and use of screening and assessment tools to inform judicial and executive
branch decisions regarding arraignment and bail, pretrial conditions and supervision, probation
and parole supervision, correctional programs, and parole release;

(2) Use of court rules designed to accelerate the disposition and improve the procedural
fairness of pretrial decisions, including violations of bail, filing, deferred sentence, and probation;

(3) Use of judicial sentencing benchmarks designed to:
   (i) Guide purposeful, limited probation and suspended sentence terms; and
   (ii) Achieve proportionate sanctions for violations;

(4) Progress by the department of corrections, division of rehabilitative services, in
achieving the initiatives required by §42-56-7;

(5) The feasibility of implementing additional law enforcement training in responding to
people with behavioral health and substance abuse needs, and of providing for one or more
suitable locations for such people to be referred for treatment; and

(6) Barriers to reentry and the availability and effectiveness of programs designed to
increase employability and employment of people in the criminal justice system.

(b) The department shall attempt to report on data analyzing key decision points with
information broken out by offense, risk, and appropriate demographic data whenever available.
The report must provide, or report on efforts to provide, relevant measures including the
following:

(1) The number of people for whom a pre-arraignment report is conducted under §12-13-24.1, and the number who are affected by each subdivision of subsection (a) of this section;

(2) The number of people who are eligible for pre-trial diversion opportunities and the
number of people selected for diversion programs;

(3) Length of probation terms and suspended sentences imposed;

(4) Sanctions imposed by probation officers and by courts and the violations triggering
the sanctions;

(5) Pre-trial lengths of stay including length prior to probation violation hearings;

(6) Volume and characteristics of people on probation caseloads, including limited and
high intensity caseloads;

(7) Restitution amounts imposed and percentage of collections by increment of time
under correctional control;

(8) Community-based cognitive behavioral treatment programs funded, including the
amount of funding received by each program and the number of high-risk probation clients served;

(9) Batterers intervention programs funded to increase or refine treatment, including the amount of funding received by each program and the number of clients served; and

(10) Amounts of victim restitution assessed and collected.

42-56-42. Severability.

If any provision of this chapter or its application to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

SECTION 5. This act shall take effect upon passage.
EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO CRIMINALS - CORRECTIONAL INSTITUTIONS - PAROLE, MEDICAL
PAROLE, COMMUNITY CONFINEMENT, AND CORRECTIONAL IMPACTS

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1 This act would amend certain provisions of the general laws pertaining to parole, medical
parole, and community confinement.

2 This act would take effect upon passage.

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