
OLR Bill Analysis

sHB 6738 (as amended by House "A")*

AN ACT CONCERNING COMPASSIONATE OR MEDICAL PAROLE AND CREDITS AWARDED FOR RELEASE DURING AN EMERGENCY DECLARATION.

SUMMARY

This bill expands the circumstances under which the Board of Pardons and Parole may grant compassionate parole. It does so by (1) lowering the “danger to society” threshold for certain inmates’ conditions for release and (2) generally allowing these releases during a major disaster or emergency declaration, such as any disease epidemic. Releases may be made at any time during the inmate’s sentence if the parole release panel finds that (1) existing circumstances pose a higher risk of harm to the inmate if he or she remains confined and (2) the inmate presents a reduced risk of presenting any danger to society.

The bill also conforms the law to current practice by specifying that three-member panels determine when and under what conditions an inmate serving a prison sentence may be released on medical or compassionate parole. As under existing law, the release panel (1) is composed of three members and (2) may, with certain conditions, release any inmate on medical or compassionate parole, except those convicted of a capital felony or murder with special circumstances.

The bill, with certain exceptions, establishes a public health release credit that may be awarded to inmates toward release from imprisonment during a declared major disaster or emergency. It authorizes the Department of Correction (DOC) commissioner to grant credits to inmates serving a prison sentence whose scheduled release date is within one year after such a declaration. Under this new credit system, the commissioner may reduce an eligible inmate’s prison term by 122 days for each month he or she is imprisoned during the period

covered by the declaration (prorated for partial months), for up to 244 days' worth of credit during that period.

Regarding the commutation of sentences, with certain exceptions, the bill generally codifies into statute the Board of Pardons and Paroles current commutation policy (Policy Number: III.02). It limits the board's independent decision-making authority to grant commutations under current law by requiring the board to do so pursuant to the bill's provisions. It also requires the governor's appointment of the board's chairperson to be done with the advice and consent of the General Assembly. The bill requires the board to meet at least semi-annually to conduct suitability hearings for eligible applicants.

The bill also makes minor, technical, and conforming changes.

*House Amendment "A" (1) strikes the underlying bill and replaces it with similar provisions on medical and compassionate release that (a) remove specific reference to the COVID-19 pandemic as a factor to be considered in granting such releases and (b) allow, rather than require, the DOC commissioner to award public health release credits and (2) adds provisions that (a) generally codify the Board of Pardons and Paroles current commutation policy; (b) limit the board's independent decision-making authority to grant commutations or releases; (c) require the governor's appointment of the board's chairperson to be done with the advice and consent of the General Assembly; (d) specify the composition of a commutation panel; and (e) remove obsolete language, including references to the death penalty.

EFFECTIVE DATE: October 1, 2023, except the provisions related to the commutation of sentences are effective upon passage.

§§ 2-8 — MEDICAL AND COMPASSIONATE PAROLE

The bill explicitly gives the Board of Pardons and Paroles independent decision-making authority to grant medical parole or compassionate parole, establish their conditions, and discharge anyone on these paroles from DOC custody.

It also brings medical and compassionate parole under certain

procedures for parole release. Under current law:

1. upon a request to return a person to custody made by certain individuals (e.g., DOC commissioner) authorized to serve criminal process, a law enforcement official must arrest and hold the person without written warrant (CGS § 54-127);
2. a parolee's parole must be revoked or rescinded after a hearing when a board employee recommends it and at least two members of a board panel approve it (CGS § 54-127a);
3. inmates returned to a DOC institution for violating parole may generally be retained in a correctional institution for the unexpired portion of their sentence with certain possible deductions (CGS § 54-128); and
4. if it appears to the appropriate panel that a person or inmate on parole will lead an orderly life, the panel may, by unanimous vote, declare the person discharged from DOC custody or terminate the special parole period, without a court order, before the period is completed (CGS § 54-129).

The bill expands these provisions to also cover those on medical and compassionate parole.

§ 9 — COMPASSIONATE PAROLE RELEASE

The bill lowers the “danger to society” threshold for certain inmates’ conditions for release under a compassionate parole.

Under current law, the board may grant compassionate parole release to an inmate if, among other things, he or she is so physically or mentally debilitated, incapacitated, or infirm due to advanced age or a non-terminal condition, disease, or syndrome, as to be physically incapable of presenting a danger to society. Under the bill, the inmate must instead present a significantly reduced risk of danger to society rather than being physically incapable of presenting a danger to society.

As under existing law, to be eligible for compassionate release, an

inmate must also have served at least half of his or her sentence, or half after the board commuted the original sentence.

Emergency Declaration or Major Disaster

The bill allows the panel to grant a compassionate parole release to any inmate (other than those convicted of a capital felony or murder with special circumstances as described above) serving a prison sentence during certain major disaster or emergency declarations. These declarations are those issued by the president covering any part of the state or by the governor, including those related to any disease epidemic, public health emergency, or a natural disaster.

The release may be at any time during the inmate’s sentence if the panel finds (1) circumstances exist that pose a higher risk of harm to the inmate if he or she remains confined and (2) the inmate presents a reduced risk of presenting any danger to society.

Under the bill, anyone granted compassionate parole release must be ordered to appear before the board or an appointed special panel within 20 days after the emergency’s expiration or termination for a hearing on whether the parole should be revoked, continued, or modified. The board or panel must revoke the parole release if it finds (1) the risk of harm to the person if confined is no longer higher than before the major disaster or emergency declaration and (2) returning the person to confinement is in the best interest of public safety.

Rules and Regulations After Release

Under current law, anyone granted compassionate parole must be released subject to the board’s terms and conditions and supervised by DOC. The bill instead requires that they be supervised by rules and regulations the board established. As under existing law, the chairperson enforces the rules, regulations, and provisions and can retake and imprison the parolee for any reason the panel, or the chairperson with the panel’s approval, deems sufficient. The chairperson can detain a person pending the panel’s approval (CGS § 54-126).

Special Panel

The bill allows the board's chairperson to appoint a special panel to implement the bill's compassionate parole provisions and review and decide requests for these paroles on an emergency basis. The bill requires the chairperson to act as expeditiously as possible in all cases.

Applicability for Other Paroles

The bill specifies that the compassionate parole provisions, both under existing law and the bill, do not affect an inmate's eligibility for any other form of parole or release provided by law.

Reporting

Starting by October 1, 2024, the bill requires the board to annually report to the Judiciary Committee on the number of:

1. inmates granted compassionate parole release in the prior year,
2. individuals released who were arrested in the prior year,
3. individuals released who were ordered re-confined for violating their release terms or conditions in the prior year, and
4. individuals released who were sentenced to confinement on a separate and unrelated offense.

§ 10 — PUBLIC HEALTH EMERGENCY RELEASE CREDITS

The bill allows the DOC commissioner to grant public health release credits to any inmate serving a prison sentence whose scheduled release date is within one year after certain major disaster or emergency declarations. This does not apply to an inmate who is a persistent dangerous felony offender, persistent dangerous sexual offender, or those who committed:

1. murder (CGS § 53a-54a),
2. murder with special circumstances (CGS § 53a-54b),
3. felony murder (CGS § 53a-54c),

4. arson murder (CGS § 53a-54d),
5. 1st degree manslaughter (CGS § 53a-55),
6. 1st degree manslaughter with a firearm (CGS § 53a-55a),
7. 1st degree aggravated sexual assault (CGS § 53a-70a),
8. aggravated sexual assault of a minor (CGS § 53a-70c), or
9. home invasion (CGS § 53a-100aa).

Regardless of any provision in existing law, the DOC commissioner may award public health release credits to any eligible inmate serving a sentence during the period covered by the declaration. The credits count toward reducing the inmate's imprisonment term by 122 days for each month the inmate is imprisoned during the period covered by the declaration. The credit must be prorated for partial months within the period. A covered declaration is the same as those for compassionate parole release during a major disaster or emergency declaration (see above). The commissioner must not award more than 244 days' worth of credit to any inmate during any declaration.

Under the bill, any credit awarded may only be awarded during the time an inmate is sentenced to a prison term and committed to the DOC commissioner's custody. It may not (1) be transferred or applied to a subsequent prison term, (2) be applied to reduce a mandatory minimum term the inmate must serve by law, or (3) affect an inmate's eligibility for any other form of parole or release.

§§ 1 & 11-15 — COMMUTATION OF SENTENCES

With certain exceptions, the bill generally codifies into statute the Board of Pardons and Paroles current commutation policy (Policy Number: III.02) on:

1. eligibility and application requirements;
2. review and verification of applications;

3. board employees' responsibilities;
4. administrative review;
5. hearings;
6. suitability guidelines;
7. written decisions;
8. victim notifications;
9. commutation certificates; and
10. amendments, revocations, and electronic recordings.

The primary variations from the policy are highlighted below.

Board's Authority and Responsibilities

The bill limits the Board of Pardons and Paroles' independent decision-making authority to grant commutations under current law, by requiring the board to exercise this authority under the bill's provisions.

As under the current policy, the board is primarily responsible for receiving, reviewing, and processing commutation applications in a timely manner; ensuring that applicants are eligible, conducting suitability hearings, and processing any revocations.

Appointment of the Board's Chairperson

Under current law, the governor must appoint the board's chairperson from its members. The bill requires the governor to do so with the advice and consent of the General Assembly.

Under the bill, if the position of chairperson becomes vacant when the General Assembly is not in regular session, the longest-serving member becomes the chairperson until a successor is appointed and qualified during the General Assembly's next regular session.

Commutation Panel Composition

Under the bill, each commutation panel must be composed of three

members, and may include the board's chairperson. The chairperson must designate one panel member as the panel's chair.

Eligibility

The bill does not allow the board's chairperson to waive any eligibility requirements. The policy allowed the chairperson to waive any or all the eligibility requirements under certain conditions.

Under the bill, an inmate whose application for commutation was denied or certificate revoked within the last five years is not eligible to have their application considered. The policy uses a three-year threshold.

Suitability Hearings (§§ 11 & 14)

The bill requires the board to meet at least semi-annually to conduct suitability hearings for eligible applicants.

At least 90 days before the hearing date, the bill requires the board to ensure that the:

1. Office of Victim Services (OVS) is informed about a hearing date to notify any applicable victim; and
2. Office of the Chief State's Attorney receives a copy of the application and all relevant documentation the board has.

The bill requires the Office of the Chief State's Attorney to assign an assistant state's attorney or deputy assistant state's attorney to attend each hearing. Under the bill, these individuals have a right to participate in any commutation-related hearings (i.e., suitability and revocation).

Victim Notification

Under current law, when an inmate requests a release or sentence reduction review, OVS must notify, by mail, all persons who have asked to be notified.

The bill makes an exception and instead requires OVS to notify a victim only if the inmate seeking commutation is granted a hearing. The notification must be sent as soon as practicable, but at least 30 days

before the hearing.

Commutation Effective Date

Under the bill, if a commutation panel grants a commutation, it must take effect on the 15th business day after it was granted, unless the board suspends or revokes it. Under the policy, the commutation takes effect on the 14th business day after it was granted.

Commutation Suspension

Board policy generally allows a commutation to be suspended or revoked within 14 days after a commutation decision or before the offender is released from a correction facility under certain conditions (e.g., if the application contained fraudulent information). The bill (1) allows the board to revoke or suspend a commutation any time before an offender is released for fraud, an ongoing unresolved investigation, DOC disciplinary action, or other new or significant information and (2) requires the board to revoke or suspend the commutation for an arrest, valid outstanding warrant, conviction, or charge in Connecticut or any other state or federal jurisdiction. In the latter case, the commutation is suspended or revoked automatically and without a hearing or any affirmative action by the panel.

For suspensions not subject to automatic revocation, the bill requires the panel to conduct an administrative revocation review within 30 days after the suspension.

As under the existing policy, only the commutations panel that granted the applicant's commutation subject to the revocation review may revoke the commutation, unless the board's chairperson provides otherwise.

Revocation Hearing

As is the case for a suitability hearing, the bill requires the commutations panel to allow the following people to attend and participate in a revocation hearing: the applicant; the applicant's attorney; a state's attorney, assistant state's attorney, or deputy assistant state's attorney assigned by the Office of the Chief State's Attorney's

Office; and any other person authorized by the panel's chairperson who can provide relevant testimony.

BACKGROUND

Related Bill

sHB-6917 (File 638, as amended by House "A"), favorably reported by the Judiciary Committee, among other things, requires the Board of Pardons and Paroles to (1) give copies of a convicted person's application for commutation, pardon, or release, and related materials, to the state's attorney before holding a session to consider the application and (2) allow the state's attorney to make a statement at the session (§ 11).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 25 Nay 12 (03/27/2023)