

SENATE BILL No. 289

By Committee on Federal and State Affairs

3-2

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to functional incapacitation release and terminal medical condition
3 release; permitting release of persons sentenced to imprisonment for an
4 off-grid offense; extending terminal medical condition release to
5 inmates in the custody of the secretary of corrections with a condition
6 likely to cause death within 180 days; amending K.S.A. 2022 Supp. 22-
7 3728 and 22-3729 and repealing the existing sections.
8

9 *Be it enacted by the Legislature of the State of Kansas:*

10 Section 1. K.S.A. 2022 Supp. 22-3728 is hereby amended to read as
11 follows: 22-3728. (a) (1) Upon application of the secretary of corrections,
12 the prisoner review board may grant release to any person deemed to be
13 functionally incapacitated, upon such terms and conditions as prescribed in
14 the order granting such release.

15 (2) The secretary of corrections shall adopt rules and regulations
16 governing the prisoner review board's procedure for initiating, processing,
17 reviewing and establishing criteria for review of applications filed on
18 behalf of persons deemed to be functionally incapacitated. Such rules and
19 regulations shall include criteria and guidelines for determining whether
20 the functional incapacitation precludes the person from posing a threat to
21 the public.

22 (3) Subject to the provisions of ~~subsections (a)(4) and (a)(5)~~
23 *paragraphs (4) and (5)*, a functional incapacitation release shall not be
24 granted until at least 30 days after written notice of the application has
25 been given to: (A) The prosecuting attorney and the judge of the court in
26 which the person was convicted; and (B) any victim of the person's crime
27 or the victim's family. Notice of such application shall be given by the
28 secretary of corrections to the victim who is alive and whose address is
29 known to the secretary, or if the victim is deceased, to the victim's family
30 if the family's address is known to the secretary. Subject to the provisions
31 of ~~subsection (a)(4) paragraph (4)~~, if there is no known address for the
32 victim, if alive, or the victim's family, if deceased, the board shall not grant
33 or deny such application until at least 30 days after notification is given by
34 publication in the county of conviction. Publication costs shall be paid by
35 the department of corrections.

36 (4) All applications for functional incapacitation release shall be

1 referred to the board. The board shall examine each case and may approve
2 such application and grant a release. An application for release shall not be
3 approved unless the board determines that the person is functionally
4 incapacitated and does not represent a future risk to public safety. The
5 board shall determine whether a hearing is necessary on the application.
6 The board may request additional information or evidence it deems
7 necessary from a medical or mental health practitioner.

8 (5) The board shall establish any conditions related to the release of
9 the person. The release shall be conditional, and be subject to revocation
10 pursuant to K.S.A. 75-5217, and amendments thereto, if the person's
11 functional incapacity significantly diminishes, if the person fails to comply
12 with any condition of release, or if the board otherwise concludes that the
13 person presents a threat or risk to public safety. The person shall remain on
14 release supervision until the release is revoked, expiration of the maximum
15 sentence, or discharged by the board. Subject to the provisions of
16 ~~subsection (f) of K.S.A. 75-5217(f)~~, and amendments thereto, the person
17 shall receive credit for the time during which the person is on functional
18 incapacitation release supervision towards service of the prison and
19 postrelease supervision obligations of determinate sentences or
20 indeterminate sentences.

21 (6) The secretary of corrections shall cause the person to be
22 supervised upon release, and shall have the authority to initiate revocation
23 of the person at any time for the reasons indicated in ~~subsection (a)(5)~~
24 *paragraph (5)*.

25 (7) The decision of the board on the application or any revocation
26 shall be final and not subject to review by any administrative agency or
27 court.

28 (8) In determining whether a person is functionally incapacitated, the
29 board shall consider the following:

30 (A) The person's current condition as confirmed by medical or mental
31 health care providers, including whether the condition is terminal;

32 (B) the person's age and personal history;

33 (C) the person's criminal history;

34 (D) the person's length of sentence and time the person has served;

35 (E) the nature and circumstances of the current offense;

36 (F) the risk or threat to the community if released;

37 (G) whether an appropriate release plan has been established; and

38 (H) any other factors deemed relevant by the board.

39 (b) Nothing in this section shall be construed to limit or preclude
40 submission of an application for pardon or commutation of sentence
41 pursuant to K.S.A. 22-3701, and amendments thereto.

42 (c) Nothing in this section shall apply to the release of people with
43 terminal medical conditions as described in K.S.A. 2022 Supp. 22-3729,

1 and amendments thereto.

2 ~~(d) This section does not apply to any person sentenced to~~
3 ~~imprisonment for an off-grid offense.~~

4 ~~(e) This section does not apply to any person under sentence of death~~
5 ~~or life without the possibility of parole.~~

6 Sec. 2. K.S.A. 2022 Supp. 22-3729 is hereby amended to read as
7 follows: 22-3729. (a) (1) Upon application of the secretary of corrections,
8 the chairperson of the prisoner review board may grant release to any
9 person deemed by a doctor licensed to practice medicine and surgery in
10 Kansas to have a terminal medical condition likely to cause death within
11 ~~30~~ 180 days upon such terms and conditions as prescribed in the order
12 granting such release.

13 (2) The secretary of corrections shall adopt rules and regulations
14 governing the prisoner review board's procedure for initiating, processing,
15 reviewing and establishing criteria for review of applications filed on
16 behalf of persons deemed to have a terminal medical condition likely to
17 cause death within ~~30~~ 180 days. Such rules and regulations shall include
18 criteria and guidelines for determining whether the terminal medical
19 condition precludes the person from posing a threat to the public.

20 (3) All applications for a terminal medical condition release shall be
21 referred to the chairperson of the board. The chairperson of the board shall
22 examine each case and may approve such application and grant a release.
23 An application for release shall not be approved unless the chairperson of
24 the board determines that the person has been deemed by a doctor licensed
25 to practice medicine and surgery in Kansas to have a terminal medical
26 condition likely to cause death within ~~30~~ 180 days and does not represent a
27 future risk to public safety. The chairperson of the board may request
28 additional information or evidence the chairperson of the board deems
29 necessary from a doctor licensed to practice medicine and surgery in
30 Kansas.

31 (4) (A) The chairperson of the board shall establish any conditions
32 related to the release of the person. The release shall be conditional, and be
33 subject to revocation pursuant to K.S.A. 75-5217, and amendments
34 thereto, if the:

35 (i) Person's illness or condition significantly improves; ~~the;~~

36 (ii) person does not die within ~~30~~ 180 days of release; ~~if the;~~

37 (iii) person fails to comply with any condition of release; ~~or if the;~~ or

38 (iv) board otherwise concludes that the person presents a threat or risk
39 to public safety.

40 (B) The person shall remain on release supervision until the release is
41 revoked, expiration of the maximum sentence or discharged by the board.
42 Subject to the provisions of ~~subsection (f) of~~ K.S.A. 75-5217(f), and
43 amendments thereto, the person shall receive credit for the time during

1 which the person is on terminal medical condition release supervision
2 towards service of the prison and postrelease supervision obligations of
3 determinate sentences or indeterminate sentences.

4 (5) The secretary of corrections shall cause the person to be
5 supervised upon release, and shall have the authority to initiate revocation
6 of the person at any time for the reasons indicated in ~~subsection (a)(4)~~
7 *paragraph (4)*.

8 (6) The decision of the chairperson of the board on the application
9 and the decision of the board regarding any revocation shall be final and
10 not subject to review by any administrative agency or court.

11 (7) In determining whether a person meets the criteria to be released
12 under this section, the chairperson of the board shall consider the
13 following:

14 (A) The person's current condition as confirmed by a doctor licensed
15 to practice medicine and surgery in Kansas, including whether the
16 condition is terminal and likely to cause death within ~~30~~ 180 days;

17 (B) the person's age and personal history;

18 (C) the person's criminal history;

19 (D) the person's length of sentence and time the person has served;

20 (E) the nature and circumstances of the current offense;

21 (F) the risk or threat to the community if released;

22 (G) whether an appropriate release plan has been established; and

23 (H) any other factors deemed relevant by the board member.

24 (b) Nothing in this section shall be construed to limit or preclude
25 submission of an application for pardon or commutation of sentence
26 pursuant to K.S.A. 22-3701, and amendments thereto.

27 (c) The secretary shall give notice of the granting of a terminal
28 medical condition release to:

29 (1) The prosecuting attorney and the judge of the court in which the
30 person was convicted; and

31 (2) any victim of the person's crime if alive or the victim's family if
32 the victim is deceased, whose address is known by the secretary.

33 ~~(d) This section does not apply to any person sentenced to~~
34 ~~imprisonment for an off-grid offense.~~

35 Sec. 3. K.S.A. 2022 Supp. 22-3728 and 22-3729 are hereby repealed.

36 Sec. 4. This act shall take effect and be in force from and after its
37 publication in the Kansas register.