

CHAPTER 107
HOUSE BILL No. 2412

AN ACT concerning crimes, criminal procedure and punishment; relating to persons in the custody of the secretary of corrections; early release of the functionally incapacitated; early release of persons with terminal medical conditions; amending K.S.A. 22-3728 and repealing the existing section.

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

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

(2) The Kansas parole board shall adopt rules and regulations governing the procedure for initiating, processing, reviewing and establishing criteria for review of applications filed on behalf of persons deemed to be functionally incapacitated. Such rules and regulations shall include criteria and guidelines for determining whether the functional incapacitation precludes the person from posing a threat to the public.

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

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

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

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

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

(8) In determining whether a person is functionally incapacitated, the board shall consider the following: (A) The person's current condition as confirmed by medical or mental health care providers, including whether the condition is terminal;

- (B) the person's age and personal history;
- (C) the person's criminal history;
- (D) the person's length of sentence and time the person has served;
- (E) the nature and circumstances of the current offense;

- (F) the risk or threat to the community if released;
- (G) whether an appropriate release plan has been established; and
- (H) any other factors deemed relevant by the board.

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

(c) *Nothing in this section shall apply to the release of people with terminal medical conditions as described in section 2, and amendments thereto.*

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

New Sec. 2. (a) (1) Upon application of the secretary of corrections, the chairperson of the Kansas parole board may grant release to any person deemed by a doctor licensed to practice medicine and surgery in Kansas to have a terminal medical condition likely to cause death within 30 days upon such terms and conditions as prescribed in the order granting such release.

(2) The Kansas parole board shall adopt rules and regulations governing the procedure for initiating, processing, reviewing and establishing criteria for review of applications filed on behalf of persons deemed to have a terminal medical condition likely to cause death within 30 days. Such rules and regulations shall include criteria and guidelines for determining whether the terminal medical condition precludes the person from posing a threat to the public.

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

(4) The chairperson of the board shall establish any conditions related to the release of the person. The release shall be conditional, and be subject to revocation pursuant to K.S.A. 75-5217, and amendments thereto, if the person's illness or condition significantly improves, the person does not die within 30 days of release, if the person fails to comply with any condition of release, or if the board otherwise concludes that the person presents a threat or risk to public safety. The person shall remain on release supervision until the release is revoked, expiration of the maximum sentence or discharged by the board. Subject to the provisions of subsection (f) of K.S.A. 75-5217, and amendments thereto, the person shall receive credit for the time during which the person is on terminal medical condition release supervision towards service of the prison and postrelease supervision obligations of determinate sentences or indeterminate sentences.

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

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

(7) In determining whether a person meets the criteria to be released under this section, the chairperson of the board shall consider the following: (A) The person's current condition as confirmed by a doctor licensed to practice medicine and surgery in Kansas, including whether the condition is terminal and likely to cause death within 30 days;

- (B) the person's age and personal history;
- (C) the person's criminal history;
- (D) the person's length of sentence and time the person has served;
- (E) the nature and circumstances of the current offense;
- (F) the risk or threat to the community if released;
- (G) whether an appropriate release plan has been established; and
- (H) any other factors deemed relevant by the board member.

(b) Nothing in this section shall be construed to limit or preclude submission of an application for pardon or commutation of sentence pur-

suant to K.S.A. 22-3701, and amendments thereto.

(c) The secretary shall give notice of the granting of a terminal medical condition release to: (1) The prosecuting attorney and the judge of the court in which the person was convicted; and (2) any victim of the person's crime if alive or the victim's family if the victim is deceased, whose address is known by the secretary.

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

Sec. 3. K.S.A. 22-3728 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 15, 2010.
