

SENATE, No. 2594

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JUNE 22, 2020

Sponsored by:

Senator SANDRA B. CUNNINGHAM

District 31 (Hudson)

Co-Sponsored by:

Senator Scutari

SYNOPSIS

Establishes compassionate release program for certain inmates; repeals law that establishes medical parole.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 8/25/2020)

1 **AN ACT** concerning parole, supplementing Title 30 of the Revised
2 Statutes, and repealing section 1 of P.L.1997, c.214.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. a. Notwithstanding any provision of P.L.1979, c.441
8 (C.30:4-123.45 et seq.) to the contrary, the court may release an
9 inmate who qualifies under this section for compassionate release at
10 any time during the term of incarceration. An inmate granted
11 compassionate release pursuant to this section shall be subject to
12 custody, supervision, and conditions as provided in section 15 of
13 P.L.1979, c.441 (C.30:4-123.59) and shall be subject to sanctions
14 for a violation of a condition of compassionate release as if on
15 parole as provided in sections 16 through 21 of P.L.1979, c.441
16 (C.30:4-123.60 through 30:4-123.65).

17 b. The Commissioner of Corrections shall establish and
18 maintain a process by which an inmate may obtain a medical
19 diagnosis to determine whether the inmate is eligible for
20 compassionate release. The medical diagnosis shall be made by
21 two licensed physicians designated by the commissioner. The
22 diagnosis shall include, but not be limited to:

23 (1) a description of the terminal condition, disease or syndrome,
24 or permanent physical incapacity;

25 (2) a prognosis concerning the likelihood of recovery from the
26 terminal condition, disease or syndrome, or permanent physical
27 incapacity;

28 (3) a description of the inmate's physical incapacity, if
29 appropriate; and

30 (4) a description of the type of ongoing treatment that would be
31 required if the inmate is granted compassionate release.

32 c. A medical diagnosis to determine whether an inmate is
33 eligible for compassionate release under this section may be
34 initiated by the administrator, superintendent, or a staff member of a
35 correctional facility or, upon request, submitted to the
36 Commissioner of Corrections by the inmate, a member of the
37 inmate's family, or the inmate's attorney. The request shall be
38 submitted in a manner and form prescribed by the Commissioner of
39 Corrections.

40 d. (1) In the event that a medical diagnosis determines that an
41 inmate is suffering from a grave medical condition as defined in
42 subsection l. of this section, the Department of Corrections shall
43 promptly notify the inmate's attorney or, if the inmate does not
44 have an attorney, the Public Defender, to initiate the process of
45 petitioning for compassionate release.

46 (2) In the event that a medical diagnosis determines that an
47 inmate is suffering from a terminal condition, disease or syndrome,

1 or permanent physical incapacity as defined in subsection 1. of this
2 section, the Department of Corrections shall promptly issue to the
3 inmate a Certificate of Eligibility for Compassionate Release and
4 provide a copy of the certificate to the inmate's attorney or, if the
5 inmate does not have an attorney, the Public Defender. An inmate
6 who receives a Certificate of Eligibility for Compassionate Release
7 may petition the court for compassionate release.

8 (3) In the event of a medical diagnosis that an inmate is
9 suffering from a grave medical condition or upon issuance of a
10 Certificate of Eligibility for Compassionate Release, an inmate may
11 request representation from the Office of the Public Defender for
12 the purpose of filing a petition for compassionate release.

13 e. A hearing on a petition for compassionate release shall be
14 held on an expedited basis in the Superior Court in accordance with
15 the Rules of Court.

16 (1) A copy of the petition shall be served in accordance with the
17 Rules of Court on the county prosecutor who prosecuted the matter
18 or, if the matter was prosecuted by the Attorney General, the
19 Attorney General.

20 (2) The county prosecutor or the Attorney General, as the case
21 may be, shall provide a copy of the petition to any victim or
22 member of the family of a victim entitled to notice relating to a
23 parole or the consideration of a parole under the provisions of
24 P.L.1979, c.441 (C.30:4-123.45 et seq.), and shall notify the victim
25 or family member of the opportunity to present a written or
26 videotaped statement at the hearing on the petition or to testify to
27 the court concerning any harm suffered by the victim or family
28 member at the time of the hearing.

29 (3) Upon receipt of the petition, the county prosecutor or
30 Attorney General, as the case may be, and the victim or member of
31 the family of the victim, as the case may be, may submit any
32 comments to the court within 15 days following receipt of the
33 petition.

34 (4) The information contained in the petition and the contents of
35 any comments submitted by a recipient in response thereto shall be
36 confidential and shall not be disclosed to any person who is not
37 authorized to receive or review the information or comments.

38 (5) If a recipient of the petition does not submit comments
39 within the 15-day period following receipt of the petition, the court
40 may presume that the recipient does not wish to submit comments
41 and proceed with its consideration of the petition.

42 (6) The prosecutor shall have 15 days to respond to the petition,
43 and a hearing shall be held on an expedited basis after receipt of
44 any response.

45 Notice given under the provisions of this subsection shall be in
46 lieu of any other notice of parole consideration required under
47 P.L.1979, c.441 (C.30:4-123.45 et seq.).

1 Nothing in this subsection shall be construed to impair the right
2 of any party to be heard pursuant to P.L.1979, c.441 (C.30:4-123.45
3 et seq.).

4 f. (1) Notwithstanding the provisions of subsection a. of
5 section 9 of P.L.1979, c.441 (C.30:4-123.53), the court may order
6 the compassionate release of an inmate who has been issued a
7 Certificate of Eligibility for Compassionate Release pursuant to
8 paragraph (2) of subsection d. of this section if the court finds by
9 clear and convincing evidence that the inmate is so debilitated or
10 incapacitated by the terminal condition, disease or syndrome, or
11 permanent physical incapacity as to be permanently physically
12 incapable of committing a crime if released and, in the case of a
13 permanent physical incapacity, the conditions established in
14 accordance with subsection h. of this section under which the
15 inmate would be released would not pose a threat to public safety.

16 (2) The court may summarily dismiss a petition for
17 compassionate release if the petition is submitted without a
18 Certificate of Eligibility for Compassionate Release pursuant to
19 paragraph (2) of subsection d. of this section.

20 (3) The court shall provide to the inmate; the county prosecutor
21 or Attorney General, as the case may be; and any victim or member
22 of a victim's family notified pursuant to subsection e. of this
23 section, written notice of its decision setting forth the reasons for
24 granting or denying compassionate release.

25 g. An order by the court granting a petition for compassionate
26 release shall not become final for 10 days in order to permit the
27 prosecution to appeal the court's order.

28 h. Whenever an inmate is granted compassionate release
29 pursuant to this section, the court shall require, as a condition
30 precedent to release, the State Parole Board to ensure that the
31 inmate's release plan includes:

32 (1) identification of a community sponsor;

33 (2) verification of the availability of appropriate medical
34 services sufficient to meet the treatment requirements identified
35 pursuant to paragraph (4) of subsection b. of this section; and

36 (3) verification of appropriate housing which may include, but
37 need not be limited to, a hospital, hospice, nursing home facility, or
38 other housing accommodation suitable to the inmate's medical
39 condition, disease or syndrome, or permanent physical incapacity.

40 The Commissioner of Corrections shall ensure that any inmate
41 who petitions for compassionate release is provided an opportunity
42 to apply, and is provided necessary assistance to complete the
43 application, for medical assistance benefits under the Medicaid
44 program established pursuant to P.L.1968, c.413 (C.30:4D-
45 1 et seq.) prior to any determination of ineligibility by the court as a
46 result of the inability to verify the availability of appropriate

1 medical services, as required pursuant to paragraph (2) of this
2 subsection.

3 i. In addition to any conditions imposed pursuant to section 15
4 of P.L.1979, c.441 (C.30:4-123.59), as a condition of
5 compassionate release, the State Parole Board may require an
6 inmate to submit to periodic medical diagnoses by a licensed
7 physician.

8 j. If, after review of a medical diagnosis required under the
9 provisions of subsection i. of this section, the State Parole Board
10 determines that a parolee granted compassionate release is no
11 longer so debilitated or incapacitated by a terminal condition,
12 disease or syndrome, or by a permanent physical incapacity as to be
13 physically incapable of committing a crime or, in the case of a
14 permanent physical incapacity, the parolee poses a threat to public
15 safety, the State Parole Board shall initiate proceedings to return the
16 inmate to confinement in an appropriate facility designated by the
17 Commissioner of Corrections.

18 The court shall hold a hearing on an expedited basis to determine
19 whether the parolee should be returned to confinement pursuant to
20 this subsection. Nothing in this subsection shall be construed to
21 limit the authority of the board, an appropriate board panel, or
22 parole officer of the State Parole Board to address a violation of a
23 condition of parole pursuant to sections 16 through 21 of P.L.1979,
24 c.441 (C.30:4-123.60 through 30:4-123.65).

25 k. The denial of a petition for compassionate release or the
26 return of a parolee to confinement under the provisions of
27 subsection j. of this section shall not preclude an inmate from being
28 considered for parole, if eligible, pursuant to subsection a. of
29 section 7 of P.L.1979, c.441 (C.30:4-123.51).

30 l. For purposes of this section:

31 “Grave medical condition” means a prognosis by the licensed
32 physicians designated by the Commissioner of Corrections pursuant
33 to subsection b. of this section that an inmate has more than six
34 months but not more than 12 months to live or has a medical
35 condition that did not exist at the time of sentencing and for at least
36 three months has rendered the inmate unable to perform activities of
37 basic daily living, resulting in the inmate requiring 24-hour care.

38 “Terminal condition, disease or syndrome” means a prognosis by
39 the licensed physicians designated by the Commissioner of
40 Corrections pursuant to subsection b. of this section that an inmate
41 has six months or less to live.

42 “Permanent physical incapacity” means a prognosis by the
43 licensed physicians designated by the Commissioner of Corrections
44 pursuant to subsection b. of this section that an inmate has a
45 medical condition that renders the inmate permanently unable to
46 perform activities of basic daily living, results in the inmate
47 requiring 24-hour care, and did not exist at the time of sentencing.

1 2. Section 1 of P.L.1997, c.214 (C.30:4-123.51c) is repealed.

2

3 3. This act shall take effect on the first day of the fourth month
4 following enactment, provided however, that the Commissioner of
5 Corrections may take such anticipatory action as deemed necessary
6 to effectuate the provisions of this act.

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STATEMENT

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11 This bill establishes compassionate release for certain inmates
12 and repeals the current medical parole law.

13 Under the bill, a court may release an inmate who qualifies for
14 compassionate release at any time if the inmate is found to be
15 suffering from: 1) a grave medical condition; 2) a terminal
16 condition, disease or syndrome; or 3) a permanent physical
17 incapacity.

18 The bill defines “grave medical condition” to mean a prognosis
19 that an inmate has more than six months but not more than 12
20 months to live or has a medical condition that did not exist at the
21 time of sentencing that for at least three months has required the
22 inmate to receive 24 hour care. The bill defines “terminal
23 condition, disease or syndrome” to mean a prognosis that the inmate
24 has six months or less to live. Finally, the bill defines “permanent
25 physical incapacity” to mean a prognosis that an inmate has a
26 medical condition that did not exist at the time of sentencing and
27 renders him or her permanently unable to perform activities of basic
28 daily living, requiring 24-hour care.

29 The bill provides that the Department of Corrections (DOC) is to
30 establish a process for an inmate to obtain a diagnosis from two
31 licensed physicians to determine whether he or she is eligible for
32 compassionate release. The diagnosis is required to include, but is
33 not limited to:

- 34 • a description of the condition, disease or syndrome, or
35 permanent physical incapacity;
36 • a prognosis concerning the likelihood of recovery, if
37 appropriate;
38 • a description of the inmate’s physical incapacity; and
39 • a description of the type of ongoing treatment that would be
40 required if the inmate is granted compassionate release.

41 If the inmate is diagnosed with a grave medical condition, under
42 the bill, the inmate’s attorney or public defender may initiate the
43 process of petitioning for compassionate release. If the inmate is
44 diagnosed with a terminal condition, disease or syndrome, or
45 permanent physical incapacity, the DOC is to provide the inmate
46 and the inmate’s attorney or public defender with a certificate of
47 eligibility for compassionate release. The inmate may petition the

1 Superior Court for compassionate release based on the certificate of
2 eligibility.

3 This bill requires a hearing to be held on an expedited basis. In
4 addition, the county prosecutor or Attorney General is required to
5 provide a copy of the petition to any victim or family member who
6 is entitled to notice. The court is to provide a copy of its written
7 decision to the inmate, the county prosecutor or Attorney General,
8 and any victim or member of a victim's family who is to be
9 provided with notice.

10 If an inmate is granted compassionate release under the bill, the
11 court is required to ensure that the parole board has created a
12 release plan that includes: 1) identification of a community sponsor;
13 2) verification of the availability of appropriate medical services
14 sufficient to meet the inmate's treatment needs; and 3) verification
15 of appropriate housing.

16 The bill provides that the Commissioner of Corrections is to
17 ensure that the inmate is provided assistance in completing an
18 application for Medicaid benefits. The State Parole Board is to
19 initiate proceedings to return the inmate to confinement if he or she
20 is no longer debilitated by a terminal condition, disease or
21 syndrome, or permanent physical incapacity and, therefore, capable
22 of committing a crime.

23 Finally, this bill repeals the current medical parole law. Under
24 current law, an inmate suffering from a terminal condition or
25 permanent physical incapacity may be eligible for medical parole,
26 with the exception of inmates serving a sentence for certain crimes.
27 Under current law, a decision concerning the medical parole of an
28 inmate is conducted by the parole board.