

[First Reprint]

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:

Senators Scutari and Pou

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Senate Judiciary Committee on August 25, 2020, with amendments.



(Sponsorship Updated As Of: 8/27/2020)

1 AN ACT concerning parole, supplementing Title 30 of the Revised
2 Statutes, ¹amending P.L.1967, c.43,¹ and repealing section 1 of
3 P.L.1997, c.214.

4

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

7

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

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

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

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

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

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

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

41 d. (1) In the event that a medical diagnosis determines that an
42 inmate is suffering from a grave medical condition as defined in
43 subsection l. of this section, the Department of Corrections shall
44 promptly notify the inmate's attorney or, if the inmate does not

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SJU committee amendments adopted August 25, 2020.

1 have an attorney, the Public Defender, to initiate the process of
2 petitioning for compassionate release. ¹The petition shall not be
3 filed until a subsequent medical diagnosis determines that the
4 inmate is suffering from a terminal condition, disease or syndrome,
5 or a permanent physical incapacity as defined in subsection l. of this
6 section and the Department of Corrections issues to the inmate a
7 Certificate of Eligibility for Compassionate Release.¹

8 (2) In the event that a medical diagnosis determines that an
9 inmate is suffering from a terminal condition, disease or syndrome,
10 or permanent physical incapacity as defined in subsection l. of this
11 section, the Department of Corrections shall promptly issue to the
12 inmate a Certificate of Eligibility for Compassionate Release and
13 provide a copy of the certificate to the inmate's attorney or, if the
14 inmate does not have an attorney, the Public Defender. An inmate
15 who receives a Certificate of Eligibility for Compassionate Release
16 may petition the court for compassionate release.

17 (3) In the event of a medical diagnosis that an inmate is
18 suffering from a grave medical condition or upon issuance of a
19 Certificate of Eligibility for Compassionate Release, an inmate may
20 request representation from the Office of the Public Defender for
21 the purpose of filing a petition for compassionate release.

22 e. A ¹~~["hearing on a"]~~ petition for compassionate release shall
23 be ¹~~["held on an expedited basis in"]~~ filed with¹ the Superior
24 Court ¹~~["in accordance with the Rules of Court"]~~.

25 (1) ¹~~["A"]~~ The petitioner shall serve a¹ copy of the petition
26 ¹~~["shall be served"]~~ in accordance with the Rules of Court on the
27 county prosecutor who prosecuted the matter or, if the matter was
28 prosecuted by the Attorney General, the Attorney General.

29 (2) The county prosecutor or the Attorney General, as the case
30 may be, shall provide ¹~~["a copy"]~~ notice¹ of the petition to any
31 victim or member of the family of a victim entitled to notice
32 relating to a parole or the consideration of a parole under the
33 provisions of P.L.1979, c.441 (C.30:4-123.45 et seq.), and shall
34 notify the victim or family member of the opportunity to present a
35 ¹~~["written or videotaped"]~~ statement at the hearing on the petition or
36 to testify to the court concerning any harm suffered by the victim or
37 family member at the time of the hearing.

38 (3) Upon receipt of ¹notice of¹ the petition, the ¹~~["county~~
39 ~~prosecutor or Attorney General, as the case may be, and the"]~~¹
40 victim or member of the family of the victim, as the case may be,
41 may submit any comments to the court within 15 days following
42 receipt of ¹notice of¹ the petition ¹, including but not limited to
43 advising the court of an intent to testify at the hearing¹.

44 (4) The information contained in the petition and the contents of
45 any comments submitted by a recipient in response thereto shall be

1 confidential and shall not be disclosed to any person who is not
2 authorized to receive or review the information or comments.

3 (5) If a recipient 'of a notice' of the petition does not submit
4 comments 'or advise the court of an intent to testify at the hearing'
5 within the 15-day period following receipt of the 'notice of the'
6 petition, the court may presume that the recipient does not wish to
7 submit comments and proceed with its consideration of the
8 petition.

9 (6) The prosecutor shall have 15 days to respond to the petition,
10 '[and a hearing shall be held on an expedited basis after receipt of
11 any response] which period may be extended to 30 days for good
12 cause shown.

13 (7) If the court receives from the prosecutor a response
14 objecting to the petition or is notified that a victim or a family
15 member intends to testify to the court at the hearing, the court shall
16 hold a hearing on the petition on an expedited basis in accordance
17 with the Rules of Court and procedures established by the
18 Administrative Director of the Courts. If the court does not, within
19 the time frames established under this subsection, receive a
20 response from the prosecutor objecting to the petition and is not
21 notified of an intent for a victim or family member to testify, the
22 court may make a determination on the petition without holding a
23 hearing'¹.

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

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

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

42 (2) 'No petition for compassionate release may be submitted to
43 the court unless it is accompanied by a Certificate of Eligibility for
44 Compassionate Release pursuant to paragraph (2) of subsection d.
45 of this section.'¹ The court may summarily dismiss a petition for
46 compassionate release if the petition is submitted without a

1 Certificate of Eligibility for Compassionate Release ¹【pursuant to
2 paragraph (2) of subsection d. of this section】¹.

3 (3) The court shall provide to the inmate ¹【;】 and¹ the county
4 prosecutor or Attorney General, as the case may be ¹【; and any
5 victim or member of a victim's family notified pursuant to
6 subsection e. of this section】¹, written notice of its decision setting
7 forth the reasons for granting or denying compassionate release ¹,
8 and the county prosecutor or Attorney General, as the case may be,
9 shall notify any victim or member of a victim's family who
10 received notification pursuant to paragraph (2) of subsection e. of
11 this section of the outcome of the court's decision¹.

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

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

19 (1) identification of a community sponsor;

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

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

27 The Commissioner of Corrections shall ensure that any inmate
28 who petitions for compassionate release is provided an opportunity
29 to apply, and is provided necessary assistance to complete the
30 application, for medical assistance benefits under the Medicaid
31 program established pursuant to P.L.1968, c.413 (C.30:4D-
32 1 et seq.) prior to any determination of ineligibility by the court as a
33 result of the inability to verify the availability of appropriate
34 medical services, as required pursuant to paragraph (2) of this
35 subsection.

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

41 j. If, after review of a medical diagnosis required under the
42 provisions of subsection i. of this section, the State Parole Board
43 determines that a parolee granted compassionate release is no
44 longer so debilitated or incapacitated by a terminal condition,
45 disease or syndrome, or by a permanent physical incapacity as to be
46 physically incapable of committing a crime or, in the case of a
47 permanent physical incapacity, the parolee poses a threat to public

1 safety, the State Parole Board shall ¹so notify the prosecutor, who
2 may¹ initiate proceedings to return the inmate to confinement in an
3 appropriate facility designated by the Commissioner of Corrections.
4 The ¹prosecutor shall provide notice of the request to return the
5 parolee to confinement to the parolee and the parolee's attorney or,
6 if the parolee does not have an attorney, the Public Defender. The
7 parolee shall have 15 days after receipt of the notice to object to the
8 return to confinement, which period may be extended to 30 days for
9 good cause shown. If the Superior Court receives from the parolee
10 an objection to the request to return the parolee to confinement, the¹
11 court shall hold a hearing on an expedited basis ¹in accordance with
12 the Rules of Court and procedures established by the Administrative
13 Director of the Courts¹ to determine whether the parolee should be
14 returned to confinement pursuant to this subsection. ¹If the court
15 does not receive a timely objection to the return to confinement, the
16 court may make a determination on the request without holding a
17 hearing. The parolee shall be returned to confinement if the court
18 finds, by a preponderance of the evidence, that the parolee poses a
19 threat to public safety because the parolee is no longer debilitated or
20 incapacitated by a terminal condition, disease or syndrome, or by a
21 permanent physical incapacity.¹ Nothing in this subsection shall be
22 construed to limit the authority of the board, an appropriate board
23 panel, or parole officer of the State Parole Board to address a
24 violation of a condition of parole pursuant to sections 16 through 21
25 of P.L.1979, c.441 (C.30:4-123.60 through 30:4-123.65).
26 k. The denial of a petition for compassionate release or the
27 return of a parolee to confinement under the provisions of
28 subsection j. of this section shall not preclude an inmate from being
29 considered for parole, if eligible, pursuant to subsection a. of
30 section 7 of P.L.1979, c.441 (C.30:4-123.51).
31 l. For purposes of this section:
32 "Grave medical condition" means a prognosis by the licensed
33 physicians designated by the Commissioner of Corrections pursuant
34 to subsection b. of this section that an inmate has more than six
35 months but not more than 12 months to live or has a medical
36 condition that did not exist at the time of sentencing and for at least
37 three months has rendered the inmate unable to perform activities of
38 basic daily living, resulting in the inmate requiring 24-hour care.
39 "Terminal condition, disease or syndrome" means a prognosis by
40 the licensed physicians designated by the Commissioner of
41 Corrections pursuant to subsection b. of this section that an inmate
42 has six months or less to live.
43 "Permanent physical incapacity" means a prognosis by the
44 licensed physicians designated by the Commissioner of Corrections
45 pursuant to subsection b. of this section that an inmate has a
46 medical condition that renders the inmate permanently unable to

1 perform activities of basic daily living, results in the inmate
2 requiring 24-hour care, and did not exist at the time of sentencing.

3

4 ¹2. Section 5 of P.L.1967, c.43 (C.2A:158A-5) is amended to
5 read as follows:

6 It shall be the duty of the Public Defender to provide for the
7 legal representation of any indigent defendant who is formally
8 charged with the commission of an indictable offense.

9 All necessary services and facilities of representation (including
10 investigation and other preparation) shall be provided in every case.
11 The factors of need and real value to a defense may be weighed
12 against the financial constraints of the Public Defender's office in
13 determining what are the necessary services and facilities of
14 representation.

15 Representation as herein provided for shall include any direct
16 appeal from conviction and such post-conviction proceedings as
17 would warrant the assignment of counsel pursuant to the court rules.

18 Representation for indigent defendants (a) may be provided in
19 any federal court in any matter arising out of or relating to an action
20 pending or recently pending in a court of criminal jurisdiction of
21 this State and (b) may be provided in any federal court in this State
22 where indigent defendants are charged with the commission of a
23 federal criminal offense and where the representation is under a
24 plan adopted pursuant to the Criminal Justice Act of 1964
25 (18 U.S.C. s. 3006A).

26 The Public Defender also shall provide for the legal
27 representation of any eligible inmate who is serving a custodial
28 prison sentence and requests assistance in petitioning the Superior
29 Court for compassionate release in accordance with section 1 of
30 P.L. , c. (C.) (pending before the Legislature as this bill).¹
31 (cf: P.L.1987, c.170, s.2)

32

33 ¹**[2.] 3.** Section 1 of P.L.1997, c.214 (C.30:4-123.51c) is
34 repealed.

35

36 ¹**[3.] 4.** This act shall take effect on the first day of the fourth
37 month following enactment, provided however, that the
38 Commissioner of Corrections ¹, State Parole Board, and
39 Administrative Director of the Courts¹ may take such anticipatory
40 action as deemed necessary to effectuate the provisions of this act.