

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 2594

with committee amendments

STATE OF NEW JERSEY

DATED: AUGUST 24, 2020

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 2594.

This bill, as amended, would create a compassionate release program based on Recommendation 7 of the first annual report of the New Jersey Criminal Sentencing and Disposition Commission (the CSDC), created by P.L.2009, c.81 (C.2C:48A-1 et seq.) but delayed in being constituted and actively reviewing the State's sentencing laws. The bill would specifically establish compassionate release, which could be granted any time during a term of incarceration, for certain inmates determined to be suffering from a medical affliction warranting release, based on a terminal condition, disease or syndrome, or permanent physical incapacity. The bill would also repeal the current medical parole law, per Recommendation 7, which would be replaced by the bill's compassionate release process.

The bill defines "terminal condition, disease or syndrome" as a prognosis that an affliction provides an inmate six months or less to live. The bill defines "permanent physical incapacity" as a prognosis that an affliction, which did not exist at the time of sentencing, has rendered an inmate permanently unable to perform activities of basic daily living, and requires 24-hour care.

Under the bill, the Commissioner of Corrections would establish a process for an inmate to obtain a diagnosis from two licensed physicians to determine whether the inmate is eligible for compassionate release. The diagnosis would be required to include, but would not be limited to:

- a description of the terminal condition, disease or syndrome, or permanent physical incapacity, and prognosis concerning the likelihood of recovering from that affliction; and
- a description of the type of ongoing treatment that would be required if the inmate is granted compassionate release.

In the event that the inmate was diagnosed with a terminal condition, disease or syndrome, or permanent physical incapacity by the two examining physicians, the DOC would promptly provide the inmate with a Certificate of Eligibility for Compassionate Release, and a copy of the certificate to the inmate's attorney, or the Public Defender, who can be requested to represent the inmate if the inmate

does not have an attorney. In the event that the medical diagnosis instead determines that an inmate is suffering from a “grave medical condition,” meaning a prognosis that an affliction provides an inmate more than six months but no more than 12 months to live, the Department of Corrections would promptly notify the inmate’s attorney or, if the inmate does not have an attorney, the Public Defender, to initiate the process of petitioning for compassionate release. However, a petition could not be filed for this inmate until a subsequent medical diagnosis determined that the inmate suffered from a terminal condition, disease or syndrome, or a permanent physical incapacity, and the Department of Corrections issued the certificate of eligibility to the inmate.

Once an inmate obtained the DOC’s certificate of eligibility, based either on an initial diagnosis or subsequent diagnosis, the inmate could file a petition for compassionate release in the Superior Court. The petitioning inmate would serve a copy of the petition in accordance with the Rules of Court on the county prosecutor who prosecuted the inmate or the Attorney General, if the inmate was prosecuted by the latter. The county prosecutor or Attorney General, as the case may be, would provide notice of the petition to any victim of the inmate’s offense or member of the family of a victim entitled to notice relating to the inmate’s parole, or the consideration of parole, and notify the victim or family member of the opportunity to present a statement at the hearing on the petition or to testify to the court concerning any harm suffered by the victim or family member. The victim or family member, as the case may be, would then have the opportunity to submit, within 15 days of being notified of the inmate’s petition, comments to the court. If a recipient of a petition notice did not submit comments or advise the court of an intent to testify at the hearing within the 15-day period, the court could presume that the recipient does not wish to submit comments.

A prosecutor would have 15 days to respond to the petition, but this period could be extended to 30 days for good cause shown. If the court received a response objecting to the petition, or is notified that a victim or family member intends to testify to the court at the hearing, the court would hold a hearing on the petition on an expedited basis in accordance with the Rules of Court and procedures established by the Administrative Director of the Courts. If the court did not receive any response from the prosecutor or notification of an intent for a victim or family member to testify, the court could make a determination on the petition without holding a hearing.

The court could order the compassionate release of an inmate if it finds by clear and convincing evidence that the inmate is so debilitated or incapacitated by the terminal condition, disease or syndrome, or permanent physical incapacity, as to be permanently physically incapable of committing a crime if released and, in the

case of a permanent physical incapacity, the conditions established under which the inmate would be released would not pose a threat to public safety. The court would provide the inmate and the county prosecutor or Attorney General, as the case may be, written notice of its decision setting forth the reasons for granting or denying compassionate release, and the county prosecutor or Attorney General would notify any previously noticed victim or member of a victim's family about the court's decision.

Whenever an inmate is granted compassionate release, the bill provides that the court require, as a condition precedent to release, that the State Parole Board ensure that the inmate's release plan includes:

- identification of a community sponsor;
- verification of the availability of appropriate medical services sufficient to meet the inmate's treatment requirements; and
- verification of appropriate housing which could include, but would not be limited to, a hospital, hospice, nursing home facility, or other housing accommodation suitable to the inmate's medical affliction.

With respect to verification of available medical services, the Commissioner of Corrections would be required to ensure, prior to any determination about such availability and a decision whether or not to grant compassionate release, that any inmate who petitions for release be provided an opportunity to apply, and be provided necessary assistance to complete an application, for medical assistance benefits under the Medicaid program.

A released inmate could, as a condition of release, be required to undergo periodic medical diagnoses by a licensed physician. If, after review of any such diagnosis, the State Parole Board determined that an inmate granted compassionate release is no longer so debilitated or incapacitated by a terminal condition, disease or syndrome, or by a permanent physical incapacity as to be physically incapable of committing a crime, or, in the case of a permanent physical incapacity, the former inmate poses a threat to public safety, the bill provides that the State Parole Board would notify the appropriate prosecutor, who could initiate proceedings to return the former inmate to confinement in an appropriate facility designated by the commissioner. The prosecutor would provide notice of a request to the Superior Court to return the former inmate to confinement to both that former inmate and the former inmate's attorney or, if the former inmate does not have an attorney, the Public Defender.

The former inmate would have 15 days to object after receipt of the notice of the return to confinement request, which period could be extended to 30 days for good cause shown. If the Superior Court receives an objection, the court would hold a hearing on an expedited basis to determine whether the former inmate should be returned to

confinement. If the court did not receive a timely objection, the court could make a determination on the request without holding a hearing. The former inmate would be returned to confinement if the court finds, by a preponderance of the evidence, that the former inmate poses a threat to public safety because the former inmate was no longer so debilitated or incapacitated by a terminal condition, disease or syndrome, or by a permanent physical incapacity.

This bill, as amended and reported by the committee, is identical to the First Reprint of Assembly Bill No. 2370, also reported by the committee today.

The committee amendments to the bill:

- clarify that an inmate initially diagnosed with a “grave medical condition” as described in the statement above, could only move to file a petition for compassionate release following a subsequent diagnosis showing a terminal condition, disease or syndrome, or a permanent physical incapacity, and issuance of the DOC’s certificate of eligibility, as well as clarify the authority of a court to dismiss a petition if it is not accompanied by this certificate;
- revise the procedures for the county prosecutor, or Attorney General, as the case may be, to give notice of a petition for compassionate release to a victim or family member, as described in the statement above;
- expressly provide a victim or family member the opportunity to advise a court of an intent to testify at a hearing on release, and to testify at such hearing, which would be scheduled on an expedited basis in accordance with the Rules of Court and procedures established by the Administrative Director of the Courts;
- permit a county prosecutor or Attorney General to have an extended period of up to 30 days to respond to an inmate’s petition based on good cause shown;
- authorize a court to make a determination on a petition without holding a hearing if no objection to the petition is filed, and there is no notification that a victim or family member intends to testify;
- require that the county prosecutor or Attorney General advise any victim or family member of the court’s decision to grant or deny compassionate release;
- provide that a prosecutor, after notice from the State Parole Board, and not the board itself, would be authorized to initiate proceedings to return a former inmate to confinement in an appropriate facility, as well as the specified steps for the prosecutor to give notice of a request to return a former inmate to confinement, the timeframe for objecting to such a request, and the standard of proof to determine whether a former inmate would be returned to confinement, as described in the statement above;

- update the existing duties of the Public Defender to include representation of an inmate who requests assistance to petition the Superior Court for compassionate release; and
- expressly allow the State Parole Board and the Administrative Director of the Courts, in addition to the Commissioner of Corrections, the ability to take any anticipatory administrative action in advance of the bill taking effect (the first day of the fourth month following enactment) to effectuate the bill's provisions once effective.