

**ASSEMBLY, No. 2370**

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**STATE OF NEW JERSEY**

**219th LEGISLATURE**

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INTRODUCED FEBRUARY 3, 2020

**Sponsored by:**

**Assemblyman GARY S. SCHAER**

**District 36 (Bergen and Passaic)**

**Assemblywoman VERLINA REYNOLDS-JACKSON**

**District 15 (Hunterdon and Mercer)**

**Co-Sponsored by:**

**Assemblyman Caputo**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 7/23/2020)**

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 1. 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,  
48 or permanent physical incapacity as defined in subsection 1. of this

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

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

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

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

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

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

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

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

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

44 Notice given under the provisions of this subsection shall be in  
45 lieu of any other notice of parole consideration required under  
46 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-1 et  
45 seq.) prior to any determination of ineligibility by the court as a  
46 result of the inability to verify the availability of appropriate  
47 medical services, as required pursuant to paragraph (2) of this  
48 subsection.

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

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

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

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

28 l. For purposes of this section:

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

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

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

46  
47 2. Section 1 of P.L.1997, c.214 (C.30:4-123.51c) is repealed.

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

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7                                   STATEMENT

8  
9       This bill establishes compassionate release for certain inmates  
10 and repeals the current medical parole law.

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

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

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

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

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

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

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

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

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