

[First Reprint]

ASSEMBLY, No. 2370

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 3, 2020

Sponsored by:

Assemblyman GARY S. SCHAER

District 36 (Bergen and Passaic)

Assemblywoman VERLINA REYNOLDS-JACKSON

District 15 (Hunterdon and Mercer)

Senator SANDRA B. CUNNINGHAM

District 31 (Hudson)

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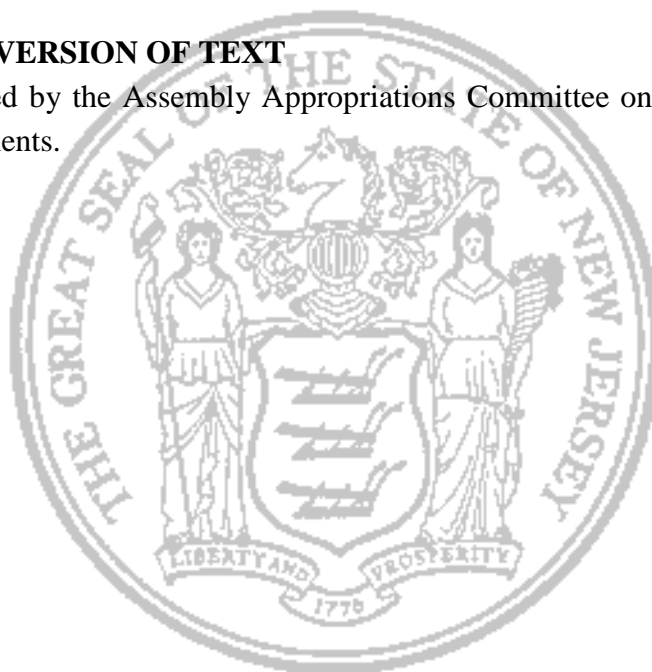
Assemblyman Caputo, Assemblywoman Jasey, Senators Scutari and Pou

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on July 27, 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. a. Notwithstanding any provision of P.L.1979, c.441
9 (C.30:4-123.45 et seq.) to the contrary, the court may release an
10 inmate who qualifies under this section for compassionate release at
11 any time during the term of incarceration. An inmate granted
12 compassionate release pursuant to this section shall be subject to
13 custody, supervision, and conditions as provided in section 15 of
14 P.L.1979, c.441 (C.30:4-123.59) and shall be subject to sanctions
15 for a violation of a condition of compassionate release as if on
16 parole as provided in sections 16 through 21 of P.L.1979, c.441
17 (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 1. of this section, the Department of Corrections shall
44 promptly notify the inmate's attorney or, if the inmate does not
45 have an attorney, the Public Defender, to initiate the process of

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:

¹Assembly AAP committee amendments adopted July 27, 2020.

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

7 (2) In the event that a medical diagnosis determines that an
8 inmate is suffering from a terminal condition, disease or syndrome,
9 or permanent physical incapacity as defined in subsection 1. of this
10 section, the Department of Corrections shall promptly issue to the
11 inmate a Certificate of Eligibility for Compassionate Release and
12 provide a copy of the certificate to the inmate's attorney or, if the
13 inmate does not have an attorney, the Public Defender. An inmate
14 who receives a Certificate of Eligibility for Compassionate Release
15 may petition the court for compassionate release.

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

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

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

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

37 (3) Upon receipt of ¹notice of¹ the petition, the ¹**["county**
38 **prosecutor or Attorney General, as the case may be, and the"]**¹
39 victim or member of the family of the victim, as the case may be,
40 may submit any comments to the court within 15 days following
41 receipt of ¹notice of¹ the petition¹, including but not limited to
42 advising the court of an intent to testify at the hearing¹.

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

1 (5) If a recipient ¹of a notice¹ of the petition does not submit
2 comments ¹or advise the court of an intent to testify at the hearing¹
3 within the 15-day period following receipt of the ¹notice of the¹
4 petition, the court may presume that the recipient does not wish to
5 submit comments and proceed with its consideration of the petition.

6 (6) The prosecutor shall have 15 days to respond to the petition,
7 ¹and a hearing shall be held on an expedited basis after receipt of
8 any response ¹which period may be extended to 30 days for good
9 cause shown.

10 (7) If the court receives from the prosecutor a response
11 objecting to the petition or is notified that a victim or a family
12 member intends to testify to the court at the hearing, the court shall
13 hold a hearing on the petition on an expedited basis in accordance
14 with the Rules of Court and procedures established by the
15 Administrative Director of the Courts. If the court does not, within
16 the time frames established under this subsection, receive a
17 response from the prosecutor objecting to the petition and is not
18 notified of an intent for a victim or family member to testify, the
19 court may make a determination on the petition without holding a
20 hearing¹.

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

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

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

39 (2) ¹No petition for compassionate release may be submitted to
40 the court unless it is accompanied by a Certificate of Eligibility for
41 Compassionate Release pursuant to paragraph (2) of subsection d.
42 of this section.¹ The court may summarily dismiss a petition for
43 compassionate release if the petition is submitted without a
44 Certificate of Eligibility for Compassionate Release ¹and¹pursuant to
45 paragraph (2) of subsection d. of this section¹.

46 (3) The court shall provide to the inmate¹; ¹and¹ the county
47 prosecutor or Attorney General, as the case may be¹; and any

1 victim or member of a victim's family notified pursuant to
2 subsection e. of this section¹, written notice of its decision setting
3 forth the reasons for granting or denying compassionate release¹,
4 and the county prosecutor or Attorney General, as the case may be,
5 shall notify any victim or member of a victim's family who
6 received notification pursuant to paragraph (2) of subsection e. of
7 this section of the outcome of the court's decision¹.

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

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

15 (1) identification of a community sponsor;

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

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

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

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

37 j. If, after review of a medical diagnosis required under the
38 provisions of subsection i. of this section, the State Parole Board
39 determines that a parolee granted compassionate release is no
40 longer so debilitated or incapacitated by a terminal condition,
41 disease or syndrome, or by a permanent physical incapacity as to be
42 physically incapable of committing a crime or, in the case of a
43 permanent physical incapacity, the parolee poses a threat to public
44 safety, the State Parole Board shall ¹so notify the prosecutor, who
45 may¹ initiate proceedings to return the inmate to confinement in an
46 appropriate facility designated by the Commissioner of Corrections.

1 The ¹prosecutor shall provide notice of the request to return the
2 parolee to confinement to the parolee and the parolee's attorney or,
3 if the parolee does not have an attorney, the Public Defender. The
4 parolee shall have 15 days after receipt of the notice to object to the
5 return to confinement, which period may be extended to 30 days for
6 good cause shown. If the Superior Court receives from the parolee
7 an objection to the request to return the parolee to confinement, the¹
8 court shall hold a hearing on an expedited basis ¹in accordance with
9 the Rules of Court and procedures established by the Administrative
10 Director of the Courts¹ to determine whether the parolee should be
11 returned to confinement pursuant to this subsection. ¹If the court
12 does not receive a timely objection to the return to confinement, the
13 court may make a determination on the request without holding a
14 hearing. The parolee shall be returned to confinement if the court
15 finds, by a preponderance of the evidence, that the parolee poses a
16 threat to public safety because the parolee is no longer debilitated or
17 incapacitated by a terminal condition, disease or syndrome, or by a
18 permanent physical incapacity.¹ Nothing in this subsection shall be
19 construed to limit the authority of the board, an appropriate board
20 panel, or parole officer of the State Parole Board to address a
21 violation of a condition of parole pursuant to sections 16 through 21
22 of P.L.1979, 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.

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

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

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

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

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

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

29
30 ¹[2.] 3.¹ Section 1 of P.L.1997, c.214 (C.30:4-123.51c) is
31 repealed.

32
33 ¹[3.] 4.¹ This act shall take effect on the first day of the fourth
34 month following enactment, provided however, that the
35 Commissioner of Corrections¹, State Parole Board, and
36 Administrative Director of the Courts¹ may take such anticipatory
37 action as deemed necessary to effectuate the provisions of this act.