

CHAPTER 106

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

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

C.30:4-123.51e Compassionate release for certain inmates.

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

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

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

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

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

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

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

d. (1) In the event that a medical diagnosis determines that an inmate is suffering from a grave medical condition as defined in subsection l. of this section, the Department of Corrections shall 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. The petition shall not be filed until a subsequent medical diagnosis determines that the inmate is suffering from a terminal condition, disease or syndrome, or a permanent physical incapacity as defined in subsection l. of this section and the Department of Corrections issues to the inmate a Certificate of Eligibility for Compassionate Release.

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

(3) In the event of a medical diagnosis that an inmate is suffering from a grave medical condition or upon issuance of a Certificate of Eligibility for Compassionate Release, an

inmate may request representation from the Office of the Public Defender for the purpose of filing a petition for compassionate release.

e. A petition for compassionate release shall be filed with the Superior Court.

(1) The petitioner shall serve a copy of the petition in accordance with the Rules of Court on the county prosecutor who prosecuted the matter or, if the matter was prosecuted by the Attorney General, the Attorney General.

(2) The county prosecutor or the Attorney General, as the case may be, shall provide notice of the petition to any victim or member of the family of a victim entitled to notice relating to a parole or the consideration of a parole under the provisions of P.L.1979, c.441 (C.30:4-123.45 et seq.), and shall 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 at the time of the hearing.

(3) Upon receipt of notice of the petition, the victim or member of the family of the victim, as the case may be, may submit any comments to the court within 15 days following receipt of notice of the petition, including but not limited to advising the court of an intent to testify at the hearing.

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

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

(6) The prosecutor shall have 15 days to respond to the petition, which period may be extended to 30 days for good cause shown.

(7) If the court receives from the prosecutor a response objecting to the petition or is notified that a victim or a family member intends to testify to the court at the hearing, the court shall 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 does not, within the time frames established under this subsection, receive a response from the prosecutor objecting to the petition and is not notified of an intent for a victim or family member to testify, the court may make a determination on the petition without holding a hearing. Notice given under the provisions of this subsection shall be in lieu of any other notice of parole consideration required under P.L.1979, c.441 (C.30:4-123.45 et seq.).

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

f. (1) Notwithstanding the provisions of subsection a. of section 9 of P.L.1979, c.441 (C.30:4-123.53), the court may order the compassionate release of an inmate who has been issued a Certificate of Eligibility for Compassionate Release pursuant to paragraph (2) of subsection d. of this section if the court 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 in accordance with subsection h. of this section under which the inmate would be released would not pose a threat to public safety.

(2) No petition for compassionate release may be submitted to the court unless it is accompanied by a Certificate of Eligibility for Compassionate Release pursuant to paragraph (2) of subsection d. of this section. The court may summarily dismiss a petition for

compassionate release if the petition is submitted without a Certificate of Eligibility for Compassionate Release.

(3) The court shall provide to 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, as the case may be, shall notify any victim or member of a victim's family who received notification pursuant to paragraph (2) of subsection e. of this section of the outcome of the court's decision.

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

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

(1) identification of a community sponsor;

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

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

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

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

j. If, after review of a medical diagnosis required under the provisions of subsection i. of this section, the State Parole Board determines that a parolee 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 parolee poses a threat to public safety, the State Parole Board shall so notify the prosecutor, who may initiate proceedings to return the inmate to confinement in an appropriate facility designated by the Commissioner of Corrections.

The prosecutor shall provide notice of the request to return the parolee to confinement to the parolee and the parolee's attorney or, if the parolee does not have an attorney, the Public Defender. The parolee shall have 15 days after receipt of the notice to object to the return to confinement, which period may be extended to 30 days for good cause shown. If the Superior Court receives from the parolee an objection to the request to return the parolee to confinement, the court shall hold a hearing on an expedited basis in accordance with the Rules of Court and procedures established by the Administrative Director of the Courts to determine whether the parolee should be returned to confinement pursuant to this subsection. If the court does not receive a timely objection to the return to confinement, the court may make a determination on the request without holding a hearing. The parolee shall be returned to confinement if the court finds, by a preponderance of the evidence, that the

parolee poses a threat to public safety because the parolee is no longer debilitated or incapacitated by a terminal condition, disease or syndrome, or by a permanent physical incapacity. Nothing in this subsection shall be construed to limit the authority of the board, an appropriate board panel, or parole officer of the State Parole Board to address a violation of a condition of parole pursuant to sections 16 through 21 of P.L.1979, c.441 (C.30:4-123.60 through 30:4-123.65).

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

l. For purposes of this section:

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

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

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

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

C.2A:158A-5 Duties of public defender.

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

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

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

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

The Public Defender also shall provide for the legal representation of any eligible inmate who is serving a custodial prison sentence and requests assistance in petitioning the Superior

Court for compassionate release in accordance with section 1 of P.L.2020, c.106 (C.30:4-123.51e).

Repealer.

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

4. This act shall take effect on the first day of the fourth month following enactment, provided however, that the Commissioner of Corrections, State Parole Board, and Administrative Director of the Courts may take such anticipatory action as deemed necessary to effectuate the provisions of this act.

Approved October 19, 2020.