

New Jersey's **Compassionate Release** program provides for releasing incarcerated individuals with (1) a terminal medical condition, disease, or syndrome or (2) permanent physical incapacity.¹

COMPASSIONATE RELEASE

I. ELIGIBILITY

Medical Condition – To be eligible for Compassionate Release, an incarcerated individual must have (1) a terminal condition, disease, or syndrome, meaning the individual has a prognosis of six months or less to live; or (2) a permanent physical incapacity, meaning the individual has a medical condition that did not exist at the time of sentencing, resulting in the permanent inability to perform activities of basic daily living and a need for 24-hour care.²

Exclusions – The Compassionate Release law does not reference any incarcerated individual who is excluded from consideration.

II. APPLICATION/REFERRAL

The process for deciding whether an individual is eligible for Compassionate Release starts with a correctional facility's administrator, superintendent, or staff member asking for an initial medical diagnosis. An incarcerated individual, family member, or attorney may also submit the request for an initial medical diagnosis to the Commissioner of the Department of Corrections (Department).³

III. DOCUMENTATION AND ASSESSMENT

Initial Diagnosis (Screening): Commissioner-Designated Physicians – The process for determining eligibility for Compassionate Release starts with the incarcerated individual obtaining a medical diagnosis from two licensed physicians, designated by the Commissioner of Corrections, that includes the following information:⁴

- A description of the individual's terminal condition, disease, syndrome, or permanent physical incapacity;
- The prognosis concerning the individual's likelihood of recovering from the terminal condition or permanent physical incapacity;
- A description of the individual's physical incapacity, if appropriate; and
- A description of the type of ongoing treatment required if Compassionate Release is granted.

Notification of Attorney/Public Defender: Department – If the initial medical diagnosis determines that the incarcerated individual has a “grave medical condition,” the Department must promptly notify the individual’s attorney or, if the person does not have an attorney, the public defender to initiate the Petition for Compassionate Release process.⁵

- To be diagnosed with a “grave medical condition,” the incarcerated individual must have one of the following:
 - More than six months but not more than 12 months to live; or
 - A medical condition that did not exist at the time of sentencing and for at least three months has rendered the individual unable to perform activities of basic daily living and in need of 24-hour care.⁶
- Note that having a “grave medical condition” is sufficient to *initiate* the petitioning process; however, the Petition cannot be filed until there is a subsequent medical diagnosis and the Department has issued a Certificate of Eligibility for Compassionate Release.⁷

Subsequent Medical Diagnosis: Licensed Physicians – Before the Petition for Compassionate Release can be filed, there must be a subsequent medical diagnosis that determines the incarcerated individual’s condition has essentially worsened and meets the statutory definition for either a terminal condition or permanent physical incapacity:

- “Terminal condition, disease or syndrome” means Commissioner-designated physicians have determined the individual has **six months or less** to live.⁸
- “Permanent physical incapacity” means Commissioner-designated physicians have determined the individual is **permanently** unable to perform activities of basic daily living and requires 24-hour care.⁹

Certificate of Eligibility for Compassionate Release: Department – Upon receiving a subsequent diagnosis stating that the incarcerated individual has a condition that meets the “terminal” or “permanent incapacitation” definition, the Department must “promptly” issue a *Certificate of Eligibility for Compassionate Release* and provide copies of the certificate to the person’s attorney or public defender.¹⁰

- Note that an incarcerated individual may request representation from the public defender’s office after receiving either (1) the initial medical diagnosis confirming a “grave medical condition” or (2) the issuance of a Certificate of Eligibility after the subsequent medical diagnosis confirming the terminal condition or permanent incapacitation.¹¹

IV. PETITION/DECISION-MAKING PROCESS

Decision Maker – The Superior Court/Criminal Division (Court) in the county in which the incarcerated individual was convicted is the ultimate decision-maker on a *Petition for Compassionate Release*.¹²

Petition – Upon receiving the Department-issued Certificate of Eligibility for Compassionate Release, the individual can submit a *Petition for Compassionate Release* to the Court.¹³

- **Filing** – The *Petition for Compassionate Release* must be filed with the Certificate of Eligibility.¹⁴

Notice

- “Immediately” after the Petition has been filed, Court staff must notify the Department and the New Jersey State Parole Board of the filing.¹⁵
- The “petitioners” (meaning the incarcerated individual and the attorney/public defender filing on the individual’s behalf) must provide a copy of the petition to the appropriate county prosecutor or attorney general,¹⁶ who then has 15 days to respond.¹⁷
- The county prosecutor/attorney general must provide notice of the *Petition for Compassionate Release* to any victim (or the victim’s family members) entitled to notice relating to the individual’s parole or consideration of parole.¹⁸
- In addition to notice of the petition, the victim or victim’s family members will be notified of the opportunity to present a statement at the Compassionate Release hearing or testify to the Court regarding any harm suffered.¹⁹ Within 15 days of receiving that notification, the victim or victim’s family members may submit comments to the Court and/or advise the Court of the intent to testify at the hearing.²⁰
 - If within the 15-day period the victim or the victim’s family members do **not** submit comments or a statement about the intent to testify at a hearing, the Court will presume that the victim or victim’s family members do not wish to submit comments and will proceed with consideration.²¹

Court Decision Whether to Hold a Hearing – Based on responses from the prosecutor and/or victim, the Court will decide whether it needs to hold a hearing on the petition.

- Hearing – If the Court receives the prosecutor’s response objecting to the *Petition for Compassionate Release* and/or notification that the victim or victim’s family member intends to testify, the Court will hold an “expedited” hearing on the petition.²²
 - Guidance from the Administrative Office of the Courts states that if all the necessary information has been submitted, the Court should conduct the hearing “sooner than the scheduled date” and/or make its determination “as soon as reasonably practical.”²³
- No Hearing – If the Court does **not** receive objections or responses within the prescribed time frames, the Court may rule on the petition without holding a hearing.²⁴

Decision Factors – The Court will not order Compassionate Release unless it finds by “clear and convincing evidence” that an incarcerated individual is so debilitated by the terminal condition or permanent physical incapacity that the person is incapable of committing a crime if released and, in the case of someone with a permanent physical incapacity, the person’s release would not pose a threat to public safety.²⁵

Release Plan – The Court requires, as a condition of Compassionate Release, the Parole Board to ensure that an incarcerated individual’s release plan includes the following information:²⁶

- Identification of a community sponsor;
- Verification of the availability of appropriate medical services sufficient to meet the identified treatment requirements;²⁷ and
- Verification of appropriate housing that may include a hospital, hospice, nursing home facility, or other housing suitable to the individual’s medical condition or permanent physical incapacity.²⁸

Decision – The Court will provide the incarcerated person and the county prosecutor/attorney general written notice of its decision with the reasons for granting or denying Compassionate Release.²⁹ Court staff will also notify the Department and the Parole Board when it grants a *Petition for Compassionate Release*.³⁰

- The county prosecutor/attorney general is responsible for contacting any victim or the victim’s family members who received notice of the petition to inform them of the Court’s decision.³¹

A court order granting Compassionate Release does not become final for 10 days to permit the county prosecutor/attorney general to appeal the order.³²

V. POST-DECISION

Conditions/Supervision – Individuals granted Compassionate Release are subject to the same supervision and conditions as people who are paroled.³³

- The Parole Board may also require those granted Compassionate Release to submit to periodic medical diagnoses by licensed physicians.³⁴

Effect of Denial on Other Release Eligibility – Denial of a *Petition for Compassionate Release* does not preclude someone from being considered for parole, if eligible.³⁵

Revocation/Termination – If the Parole Board determines that an individual who was granted Compassionate Release (1) is no longer so incapacitated by a medical condition “as to be physically incapable of committing a crime” or (2) now poses a threat to public safety, it will notify the appropriate prosecutor, who may initiate proceedings to return the person to prison.³⁶

- The return of an individual to confinement does not preclude consideration for parole if the person is eligible.³⁷

VI. REPORTING/STATISTICS

The 2021 Compassionate Release law does not require the Department, Parole Board, or Courts to report on how many individuals petition and/or are granted Compassionate Release.³⁸

- The Commissioner of Corrections is, however, required to conduct a study “to determine the fiscal impact of cost savings that may be realized from the reduction of prison population due to Compassionate Release” and issue an annual report to the Governor and New Jersey Legislature detailing the study’s results.³⁹

Note: Medical Parole Statistics – Between 2011 and 2020, the Parole Board granted Medical Parole (New Jersey’s compassionate release law prior to February 1, 2021) to just 10 people.⁴⁰

NEW JERSEY COMPASSIONATE RELEASE **PRIMARY LEGAL SOURCES**

COMPASSIONATE RELEASE

Statute

New Jersey Revised Statutes, § 30:4-123.51e (2021), available through the New Jersey Legislature by entering the title and section number in the search box at

<https://lis.njleg.state.nj.us/nxt/gateway.dll?f=templates&fn=default.htm&vid=Publish:10.1048/Enu>.

Court Directive/Procedures

New Jersey Administrative Office of the Courts, Directive 04-21, Procedures for Compassionate Release (Feb. 1, 2021), <https://njcourts.gov/notices/2021/n210202a.pdf>. The Directive includes the *Petition for Compassionate Release* form.

NOTES

* *Id.* means see prior note.

¹ N.J. Rev. Stat. § 30:4-123.51e; New Jersey Administrative Office of the Courts (AOC), Directive 04-21, Procedures for Compassionate Release. Note that the Compassionate Release law, which became effective on February 1, 2021, repealed New Jersey's Medical Parole law.

² N.J. Rev. Stat. § 30:4-123.51e-1 (l).

³ *Id.* at (c).

⁴ *Id.* at (b).

⁵ *Id.* at (d) (1).

⁶ *Id.* at (l).

⁷ *Id.* at (d) (1).

⁸ *Id.* at (l).

⁹ *Id.*

¹⁰ N.J. Rev. Stat. § 30:4-123.51e-1 (d) (2); AOC Directive 04-21, 1.

¹¹ N.J. Rev. Stat. § 30:4-123.51e-1 (d) (3). See also N.J. Rev. Stat. § 2A:158A-5.

¹² N.J. Rev. Stat. § 30:4-123.51e-1 (a); AOC Directive 04-21, 1. Information on the Superior Court county courthouses can be found at <https://www.njcourts.gov/public/courthouses.html>.

¹³ N.J. Rev. Stat. §§ 30:4-123.51e-1 (d) (2) and (f) (2). The *Petition for Compassionate Release* form is available on page 4 of AOC Directive 04-21.

¹⁴ N.J. Rev. Stat. § 30:4-123.51e-1 (f) (2); AOC Directive 04-21, Step 1. If the Certificate is not filed with the Petition, the Court may dismiss the Petition. *Id.* Attorneys must file in eCourts, a web-based application designed to allow attorneys to electronically file documents with New Jersey courts. See <https://njcourts.gov/attorneys/ecourts.html>. An individual who does not have an attorney may file the Petition by (1) mailing all the relevant documents to the Superior Court/Criminal Division in the county in which the person was convicted or (2) using the Judiciary Electronic Documents Submission (JEDS), a website that can be used by individuals representing themselves who need to submit documents to a New Jersey Court. See https://www.njcourts.gov/selfhelp/jeds_user_guide.html for additional information.

¹⁵ AOC Directive 04-21, Step 2. Note that the Directive does not define “immediately.”

¹⁶ N.J. Rev. Stat. § 30:4-123.51e-1 (e) (1).

¹⁷ N.J. Rev. Stat. § 30:4-123.51e-1 (e) (6); AOC Directive 04-21, Step 5. Note that 15 days may be extended to 30 days for good cause. *Id.*

¹⁸ N.J. Rev. Stat. § 30:4-123.51e-1 (e) (2); AOC Directive 04-21, Step 4. Note that the Directive says the notice must be provided “immediately.”

¹⁹ N.J. Rev. Stat. § 30:4-123.51e-1 (e) (2).

²⁰ N.J. Rev. Stat. § 30:4-123.51e-1 (e) (3). Note that the AOC Directive says that the prosecutor’s response to the Court should include the victim’s or family member’s comments and whether they have a desire to testify. See AOC Directive 04-21, Step 5.

²¹ N.J. Rev. Stat. § 30:4-123.51e-1 (e) (5).

²² N.J. Rev. Stat. § 30:4-123.51e-1 (e) (7); AOC Directive 04-21, Step 7. The Directive states that Court staff must schedule hearings for not later than 30 days after the Petition is filed (AOC Directive 04-21, Step 3) and that the hearings will be conducted remotely (AOC Directive 04-21, Step 7). Court staff will provide notice of hearings to the parties, the Department of Corrections, and the Parole Board. AOC Directive 04-21, Step 3.

²³ AOC Directive 04-21, Step 8.

²⁴ N.J. Rev. Stat. § 30:4-123.51e-1 (e) (7).

²⁵ N.J. Rev. Stat. § 30:4-123.51e-1 (f) (1); AOC Directive 04-21, 1.

²⁶ N.J. Rev. Stat. § 30:4-123.51e-1 (h). The Parole Board must notify the Court if the release plan information cannot be submitted prior to the hearing and the reasons for the delay. See AOC Directive 04-21, Step 6.

²⁷ Note that the Commissioner of Corrections must ensure that any individual who petitions for Compassionate Release receives the opportunity to apply for Medicaid and is provided assistance with the application “prior to any determination of ineligibility by the Court as a result of the inability to verify the availability of appropriate medical services.” See N.J. Rev. Stat. § 30:4-123.51e-1 (h).

²⁸ N.J. Rev. Stat. § 30:4-123.51e-1 (h) (3).

²⁹ Id. at (f) (3).

³⁰ AOC Directive 04-21, Step 9. The *Order on Compassionate Release* form is available on pages 5-6 of the Directive.

³¹ N.J. Rev. Stat. § 30:4-123.51e-1 (f) (3); AOC Directive 04-21, Step 4.

³² N.J. Rev. Stat. § 30:4-123.51e-1 (g); AOC Directive 04-21, Step 9.

³³ N.J. Rev. Stat. § 30:4-123.51e-1 (a), referencing N.J. Rev. Stat. §§ 30:4-123.59 and 30:4-123.60 through 30:4-123.65.

³⁴ N.J. Rev. Stat. § 30:4-123.51e-1 (i).

³⁵ Id. at (k).

³⁶ N.J. Rev. Stat. § 30:4-123.51e-1 (j); AOC Directive 04-21, 2. The prosecutor must provide notice of the request to return the individual to confinement to the person and the person's attorney or public defender; the statute includes guidance on time frames for responding. Id.

³⁷ N.J. Rev. Stat. § 30:4-123.51e-1 (k).

³⁸ Under the Medical Parole program, which was repealed by the Compassionate Release law that went into effect on February 1, 2021, the Parole Board was supposed to issue an annual report to the Governor and Legislature that included the number of inmates who applied for Medical Parole, the number of inmates who were granted Medical Parole, and the number of inmates who were denied Medical Parole. N.J. Rev. Stat. § 30:4-123.48-4 (f).

³⁹ N.J. Rev. Stat. §§ 30:4-123.51f-1 (a) and (b). Note that the Commissioner is to deposit any cost savings into the "Corrections Rehabilitation and Crime Prevention Fund," which will be used to support community-based and prison-based programs (such as educational and vocational training) and other services that facilitate "successful reentry" of incarcerated individuals. Id. at (1) (c).

⁴⁰ Letter from Dina Rogers, New Jersey State Parole Board, to Famm (May 7, 2021) (on file with Famm, Office of the General Counsel). In 2020, despite the COVID-19 pandemic, just one individual was released on Medical Parole. Id.