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**To: Assignment Judges
Criminal Presiding Judges** **DIRECTIVE # 04-21**

FROM: Glenn A. Grant, J.A.D. 

**SUBJ: Criminal – Procedures for Compassionate Release Pursuant to
N.J.S.A. 30:4-123.51e**

DATE: February 1, 2021

This Directive promulgates a process to be followed after an inmate receives a Certificate of Eligibility for Compassionate Release from the Department of Corrections (DOC) to petition the Superior Court (Criminal) for compassionate release pursuant to N.J.S.A. 30:4-123.51e, effective February 1, 2021. The Directive also promulgates a form Petition for Compassionate Release and a form order.

Specifically, N.J.S.A. 30:4-123.51e(d)(2) provides that if an inmate is diagnosed with a terminal condition, disease, or syndrome, or permanent physical incapacity, the Department of Corrections shall promptly issue a Certificate of Eligibility for Compassionate Release and provide a copy of the certificate to the inmate's attorney or the Public Defender if the inmate does not have an attorney. To grant compassionate release, the court must find by clear and convincing evidence that the person 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 established conditions under which the person would be released would not pose a threat to public safety. See N.J.S.A. 30:4-123.51e(f)(1).

The procedures to file a Petition for Compassionate Release are as follows:

1. A Petition for Compassionate Release must be filed with a Certificate of Eligibility for Compassionate Release pursuant to N.J.S.A. 30:4-123.51e(f)(2). If the Certificate is not filed with the petition, the court may summarily dismiss the petition. Attorneys must file in eCourts. Inmates who do not have an attorney may file through the Judiciary Electronic Documents Submission (JEDS), or can mail the documents to the Superior Court, Criminal Division in the county in which they were convicted. The addresses for the Superior Court county courthouses can be found on the Judiciary's website at <https://www.njcourts.gov/public/courthouses.html>.

2. Court staff will immediately notify the Department of Corrections and the State Parole Board that a Petition of Compassionate Release has been filed by email until electronic notifications can be generated by the Judiciary's system.
3. Court staff will also schedule the hearing to be held no later than 30 days after the filing. Notice of the hearing shall be provided electronically to the parties. Court staff will also provide notice of the hearing to the Department of Corrections and to the State Parole Board by email.
4. The prosecutor must immediately notify the victim or member of the victim's family of the petition in accordance with N.J.S.A. 30:4-123.51e(e). The prosecutor will also notify the victim or family member of the court's decision pursuant to N.J.S.A. 30:4-123.51e(f)(3).
5. The prosecutor has 15 days to respond to the petition, which may be extended to 30 days for good cause. The prosecutor's response to the court should include the victim or family member's comments and/or intention to testify, if applicable.
6. The release plan and any other relevant information will be provided to the court by the State Parole Board prior to the scheduled court hearing via JEDS. The State Parole Board will notify the court if the information cannot be submitted prior to the hearing, and the reasons for the delay. Court staff will need to upload the information from the Parole Board to the eCourts case jacket so that electronic notifications are provided to the parties.
7. The statute requires a hearing to be held only if there is an objection by the prosecutor or if the victim or family member intends to testify. See N.J.S.A. 30:4-123.51e(e)(7). These hearings should be conducted remotely.
8. Due to the nature of these proceedings and the need to have these determinations made as expeditiously as possible, the court should conduct the hearing sooner than the scheduled date and/or make its determination as soon as reasonably practical if all necessary information has been submitted.
9. An order granting compassionate release shall not be final for 10 days pursuant to N.J.S.A. 30:4-123.51e(g). Court staff will need to provide notice to the Department of Corrections and the State Parole Board when compassionate release orders are entered via email until electronic notifications can be generated by the Judiciary's system, and also when an appeal has been filed via email. Court staff will also need to provide them with copies of the court orders.
10. The petition, responses, and information related to the petition, including the State Parole Board's release plan shall be confidential pursuant to N.J.S.A. 30:4-123.51e(e)(4). Court orders are available to the public and, as such, should not include specific details as to the defendant's medical condition and/or health.

N.J.S.A. 30:4-123.51e(j) also provides for persons granted compassionate release to be returned to confinement. Specifically, the State Parole Board will notify the prosecutor if it determines that the person 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, poses a threat to public safety. The prosecutor can initiate proceedings to return the person to confinement. If the person or their attorney files an objection, the court will hold a hearing on an expedited basis. If the court does not receive an objection, the court can make its determination without a hearing. To return the person to confinement, the court must find by a preponderance of the evidence that the person

poses a threat to public safety because the person is no longer debilitated or incapacitated by a terminal condition, disease or syndrome, or by a permanent physical incapacity.

Questions or comments regarding this Directive may be directed to the Criminal Practice Division at (609) 815-2900, Ext. 55300.

Attachments: (1) Petition for Compassionate Release (CN 12745)
(2) Proposed Form Order (CN 12746)

cc: Chief Justice Stuart Rabner
Attorney General Gurbir S. Grewal
Public Defender Joseph E. Krakora
Department of Corrections Commissioner Marcus O. Hicks
State Parole Board Chairman Samuel J. Plumeri, Jr.
Criminal Division Judges
County Prosecutors
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Special Assistants to the Admin. Director
Trial Court Administrators
Criminal Division Managers and Assistants
Maria Pogue, Chief
Raschelle Demshock, Assistant Chief

State

v.

_____ Defendant

**Superior Court of New Jersey
Law Division – Criminal Part**

- Select County - County

Ind./Acc. Number: _____

Petition for Compassionate Release

The Defendant _____, hereby petitions the Court for compassionate release pursuant to N.J.S.A. 30:4-123.51e (“Compassionate Release for Certain Inmates”).

The defendant was convicted of (insert name of offense and statute) and sentenced to (insert term of sentence) on (insert date), and is serving the sentence at (name of institution).

Pursuant to N.J.S.A. 30:4-123.51e(d)(2), the Department of Corrections has issued the defendant a Certificate of Eligibility for Compassionate Release. The Certificate of Eligibility is attached to this petition.

Accordingly, the Court is asked to grant the Petition for Compassionate Release.

Date

s/_____
Submitted by (Defendant or Defense Attorney)

Superior Court of New Jersey
Law Division – Criminal Part

- Select County - County

Ind./Acc. Number: _____

Order on Compassionate Release

State

v.

Defendant

This matter having been opened to the Court by way of a Petition for Compassionate Release filed on (insert date) _____ to release the defendant _____ pursuant to N.J.S.A. 30:4-123.51e (“Compassionate Release for Certain Inmates”); and

The Court having considered the petition, Certificate of Eligibility for Compassionate Release, the release plan submitted by the State Parole Board, any testimony, and any related information, and for the reasons set forth on the record;

IT IS HEREBY ORDERED on this __ day of _____, 20__ that the Petition for Compassionate Release of the defendant is

- Granted.** The Court finds by clear and convincing evidence that the defendant is so debilitated or incapacitated by a (choose appropriate)
 - terminal condition, disease or syndrome,
 - 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 by the State Parole Board under which the inmate would be released would not pose a threat to public safety.

Additional Reasons (Optional)

IT IS FURTHER ORDERED that the release of the defendant shall not proceed any sooner than 10 days from the date of entry of this order and shall be in accordance with the Department of Corrections policies for compassionate release.

IT IS FURTHER ORDERED that the defendant shall comply with the release conditions established by the State Parole Board and shall be subject to sanctions for a violation of a condition of compassionate release pursuant to N.J.S.A. 30:4-123.51e(a).

- Denied.** The Court does not find by clear and convincing evidence that the defendant is so debilitated or incapacitated by a terminal condition, disease or syndrome, or by permanent physical incapacity as to be permanently physically incapable of committing a crime if released.

Additional Reasons (Optional)

Date

s/ _____, J.S.C.