

**SENATE, No. 2338**

**STATE OF NEW JERSEY**

**221st LEGISLATURE**

INTRODUCED JANUARY 29, 2024

**Sponsored by:**

**Senator RAJ MUKHERJI**

**District 32 (Hudson)**

**Senator ANGELA V. MCKNIGHT**

**District 31 (Hudson)**

**SYNOPSIS**

Provides for rehabilitative release for certain incarcerated persons.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/3/2024)**

S2338 MUKHERJI, MCKNIGHT

2

1 AN ACT concerning rehabilitative release for certain incarcerated  
2 persons, amending P.L.1979, c.441, and supplementing Title 2C  
3 of the New Jersey Statutes.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. (New section) a. Except as provided in subsection b. of this  
9 section, the Commissioner of the Department of Corrections shall  
10 issue a Certificate of Eligibility for Rehabilitative Release to any  
11 incarcerated person who:

12 (1) has served at least 20 years in custody on the sentence  
13 imposed for the offense or offenses of which the incarcerated  
14 person was convicted; and

15 (2) has attained the age of 60.

16 b. For an incarcerated person convicted of murder pursuant to  
17 N.J.S.2C:11-3, the commissioner shall issue a Certificate of  
18 Eligibility for Rehabilitative Release if the incarcerated person:

19 (1) has served at least 30 years in custody on the sentence  
20 imposed for the offense or offenses of which the incarcerated  
21 person was convicted; and

22 (2) has attained the age of 62.

23 c. At least 60 days prior to the anticipated date of issuance of a  
24 Certificate of Eligibility for Rehabilitative Release, the department  
25 shall notify the State Parole Board of its intent to issue the  
26 certificate and to initiate the report required pursuant to subsection  
27 e. of this section.

28 d. Notwithstanding any provision of law to the contrary, an  
29 incarcerated person who receives a Certificate of Eligibility for  
30 Rehabilitative Release and who has not been resentenced or  
31 previously sought relief under this section may petition the court for  
32 resentencing pursuant to the provisions of this section.

33 e. A report concerning any incarcerated person issued a  
34 Certificate of Eligibility pursuant to this section shall be prepared  
35 by staff members designated by the superintendent or other chief  
36 executive officer of the institution in which the incarcerated person  
37 is held in accordance with the provisions of section 10 of P.L.1979,  
38 c.441 (C.30:4-123.54), for consideration by the court in hearing a  
39 petition for rehabilitative release pursuant to this section.

40 f. Following the issuance of a Certificate of Eligibility for  
41 Rehabilitative Release, the Office of the Public Defender shall  
42 represent the incarcerated person for the purpose of filing a petition  
43 for rehabilitative release, unless the incarcerated person retains  
44 other counsel.

**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.**

1 g. A hearing on a petition for rehabilitative release shall be held  
2 in the Superior Court in the county where the incarcerated person  
3 was originally sentenced for the crime or crimes for which  
4 rehabilitative release is being sought and in accordance with the  
5 Rules of Court. The incarcerated person shall have the right to be  
6 present at the hearing or may waive such right. A copy of the  
7 petition shall be served in accordance with the Rules of Court on  
8 the county prosecutor who prosecuted the matter or, if the matter  
9 was prosecuted by the Division of Criminal Justice, the director of  
10 the division.

11 h. The county prosecutor or the director, as appropriate, shall  
12 have 90 days to file a response to the petition. The court may grant  
13 an extension of time for good cause.

14 i. The county prosecutor or the director, as appropriate, shall  
15 provide as soon as practicable a copy of the petition to any victim  
16 or family member of a victim entitled to notice relating to a parole  
17 or the consideration of a parole under the provisions of P.L.1979,  
18 c.441 (C.30:4-123.45 et seq.) or the "Crime Victim's Bill of  
19 Rights," P.L.1985, c.249 (C.52:4B-34 et seq.) and shall notify any  
20 such victim or family member of the opportunity to: supplement the  
21 report issued pursuant to subsection e. of this section with a written  
22 statement; present a written or videotaped statement at the hearing  
23 on the petition; or testify to the court at the time of the hearing  
24 concerning the harm to the victim or family member that resulted  
25 from the crime. Victim statements or notices of intention to provide  
26 a statement or testify at the hearing shall be submitted to the court  
27 through the prosecutor or director, as appropriate, within 60 days of  
28 notification.

29 j. (1) Notwithstanding any provision of law to the contrary, the  
30 Superior Court may, upon consideration of a petition and following  
31 a hearing, modify, reduce, or suspend a sentence, including any  
32 minimum or mandatory sentence or a portion of the sentence, if,  
33 after considering the factors set forth in subsection k. of this  
34 section, the court finds by clear and convincing evidence that:

35 (a) the incarcerated person is not a danger to the safety of any  
36 person or the community;

37 (b) the incarcerated person demonstrates a readiness for reentry,  
38 which shall be demonstrated by, among other things, significant  
39 efforts to participate in educational, therapeutic, or vocational  
40 opportunities while incarcerated; and

41 (c) the interests of justice warrant a sentence modification.

42 (2) The court shall issue a written order stating the reasons for  
43 granting or denying modification.

44 k. In determining whether the standards set forth in paragraph (1)  
45 of subsection j. of this section are met, the court shall consider the  
46 following factors:

47 (1) the incarcerated person's age at the time of the offense;

48 (2) the incarcerated person's age at the time of the petition;

1 (3) the history and characteristics of the incarcerated person at  
2 the time of the petition, including (a) rehabilitation demonstrated by  
3 the incarcerated person and (b) disciplinary record while  
4 incarcerated;

5 (4) any statement by the victim or victim's family members;

6 (5) any report from a physical, mental, or psychiatric  
7 examination of the incarcerated person conducted by a licensed  
8 health care professional;

9 (6) the seriousness of the offense and the incarcerated person's  
10 role;

11 (7) the potential benefits to the incarcerated person's children  
12 and family members of reunification with the incarcerated person;

13 (8) the potential cost savings to the State;

14 (9) the establishment of a reentry plan for the incarcerated person  
15 upon release, to include community sponsor, housing, and ability to  
16 support himself;

17 (10) the report prepared pursuant to subsection e. of this section;  
18 and

19 (11) any other information the court deems relevant.

20 1. Any incarcerated person who receives a sentence modification  
21 pursuant to this section shall also be sentenced to a five-year term  
22 of parole supervision.

23 m. An order by the court granting a petition for rehabilitative  
24 release shall not become final for 10 days in order to permit the  
25 prosecution an opportunity to appeal the court's order. An  
26 incarcerated person shall have the right to appeal a denied petition.

27  
28 2. Section 10 of P.L.1979, c.441 (C.30:4-123.54) is amended to  
29 read as follows:

30 10. a. At least 120 days but not more than 180 days prior to the  
31 parole eligibility date of each adult **[inmate]** incarcerated person ,  
32 or within 60 days of notification by the Department of Corrections  
33 of its intent to issue a Certificate of Eligibility for Rehabilitative  
34 Release pursuant to section 1 of P.L. , c. (C. ) (pending  
35 before the Legislature as this bill), as appropriate, a report  
36 concerning the **[inmate]** incarcerated person shall be filed with the  
37 appropriate board panel, by the staff members designated by the  
38 superintendent or other chief executive officer of the institution in  
39 which the **[inmate]** incarcerated person is held.

40 b. (1) The report filed pursuant to subsection a. shall contain  
41 preincarceration records of the **[inmate]** incarcerated person,  
42 including any history of civil commitment, any disposition which  
43 arose out of any charges suspended pursuant to N.J.S.2C:4-6  
44 including records of the disposition of those charges and any  
45 acquittals by reason of insanity pursuant to N.J.S.2C:4-1, state the  
46 conduct of the **[inmate]** incarcerated person during the current  
47 period of confinement, include a complete report on the **[inmate's]**

1 incarcerated person's social and physical condition, include an  
2 investigation by the Division of Parole of the **[inmate's]**  
3 incarcerated person's parole plans, and present information bearing  
4 upon the likelihood that the **[inmate]** incarcerated person will  
5 commit a crime under the laws of this State if released on parole.  
6 The report shall also include a complete psychological evaluation of  
7 the **[inmate]** incarcerated person in any case in which the **[inmate]**  
8 incarcerated person was convicted of a first or second degree crime  
9 involving violence and:

10 (a) the **[inmate]** incarcerated person has a prior acquittal by  
11 reason of insanity pursuant to N.J.S.2C:4-1 or had charges  
12 suspended pursuant to N.J.S.2C:4-6; or

13 (b) the **[inmate]** incarcerated person has a prior conviction for  
14 murder pursuant to N.J.S.2C:11-3, aggravated sexual assault or  
15 sexual assault pursuant to N.J.S.2C:14-2, kidnapping pursuant to  
16 N.J.S.2C:13-1, endangering the welfare of a child which would  
17 constitute a crime of the second degree pursuant to N.J.S.2C:24-4,  
18 or stalking which would constitute a crime of the third degree  
19 pursuant to P.L.1992, c.209 (C.2C:12-10); or

20 (c) the **[inmate]** incarcerated person has a prior diagnosis of  
21 psychosis.

22 The **[inmate]** incarcerated person shall disclose any information  
23 concerning any history of civil commitment.

24 The preincarceration records of the **[inmate]** incarcerated person  
25 contained in the report shall include any psychological reports  
26 prepared in connection with any court proceedings.

27 (2) At the time of sentencing, the prosecutor shall notify any  
28 victim injured as a result of a crime of the first or second degree or  
29 the nearest relative of a murder victim of the opportunity to present  
30 a written or videotaped statement for the parole report to be  
31 considered at the parole hearing or to testify to the parole board  
32 concerning his harm at the time of the parole hearing. Each victim  
33 or relative shall be responsible for notifying the board of his  
34 intention to submit such a statement and to provide an appropriate  
35 mailing address.

36 The report may include a written or videotaped statement  
37 concerning the continuing nature and extent of any physical harm or  
38 psychological or emotional harm or trauma suffered by the victim,  
39 the extent of any loss of earnings or ability to work suffered by the  
40 victim and the continuing effect of the crime upon the victim's  
41 family. At the time public notice is given that an **[inmate]**  
42 incarcerated person is being considered for parole pursuant to this  
43 section, the board shall also notify any victim or nearest relative  
44 who has previously contacted the board of the availability to  
45 provide a written or videotaped statement for inclusion in the parole  
46 report or to present testimony at the parole hearing.

1 The board shall notify the victim or relative at the victim's or  
2 relative's last known mailing address.

3 (3) If the **[inmate]** incarcerated person meets the requirements  
4 for administrative parole release pursuant to section 4 of P.L.2019,  
5 c.364 (C.30:4-123.55d) the report shall indicate this eligibility.

6 c. A copy of the report filed pursuant to subsection a. of this  
7 section, excepting those documents which have been classified as  
8 confidential pursuant to rules and regulations of the board or the  
9 Department of Corrections, shall be served on the **[inmate]**  
10 incarcerated person at the time it is filed with the board panel. The  
11 **[inmate]** incarcerated person may file with the board panel a  
12 written statement regarding the report, but shall do so within 105  
13 days prior to the primary parole eligibility date.

14 d. Upon receipt of the public notice pursuant to section 1 of  
15 P.L.1979, c.441 (C.30:4-123.45), a county prosecutor, a public  
16 defender, or a private attorney of record may request from the  
17 parole board a copy of the report on any adult **[inmate]**  
18 incarcerated person prepared pursuant to subsection a. of this  
19 section, which shall be expeditiously forwarded to the county  
20 prosecutor by the parole board by mail, courier, or other means of  
21 delivery. Upon receipt of the report, the prosecutor has 10 working  
22 days to review the report and notify the parole board of the  
23 prosecutor's comments, if any, or notify the parole board of the  
24 prosecutor's intent to provide comments. If the county prosecutor  
25 does not provide comments or notify the parole board of the  
26 prosecutor's intent to provide comments within the 10 working  
27 days, the parole board may presume that the prosecutor does not  
28 wish to provide comments and may proceed with the parole  
29 consideration. Any comments provided by a county prosecutor  
30 shall be delivered to the parole board by the same method by which  
31 the county prosecutor received the report. The confidentiality of  
32 the contents in a report which are classified as confidential shall be  
33 maintained and shall not be disclosed to any person who is not  
34 authorized to receive or review a copy of the report containing the  
35 confidential information.

36 e. Any provision of this section to the contrary  
37 notwithstanding, the board shall by rule or regulation modify the  
38 scope of the required reports and time periods for rendering such  
39 reports with reference to county penal institutions.

40 f. Notwithstanding any provision of this section, the board may  
41 modify the time periods for submitting the reports required pursuant  
42 to this section in processing an **[inmate]** incarcerated person whose  
43 parole eligibility date is accelerated pursuant to section 11 of  
44 P.L.1979, c.441 (C.30:4-123.55).  
45 (P.L.2019, c.364, s.9)

46  
47 3. This act shall take effect immediately.

STATEMENT

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This bill provides for the rehabilitative release of certain incarcerated persons.

Under the bill, the Department of Corrections (DOC) is required to issue a Certificate of Eligibility for Rehabilitative Release (certificate) to any incarcerated person who: (1) is at least 60 years of age, and has served at least 20 years in custody on the sentence imposed for the offense or offenses of which the incarcerated person was convicted; or (2) if convicted of murder, is at least 62 years of age and has served at least 30 years in custody.

An incarcerated person who has been issued a certificate, and has not previously sought relief under the bill, may petition the court for rehabilitative release. The Office of the Public Defender is required to represent the incarcerated person, unless the incarcerated person retains other counsel.

At least 60 days prior to the date of issuance of a certificate, the DOC is required to notify the State Parole Board of its intent to issue the certificate. The superintendent or other chief executive officer of the institution in which the incarcerated person is held is required to prepare a report for any incarcerated person issued a certificate under the bill for consideration by the court at a hearing for rehabilitative release.

In accordance with the provisions of the bill, a hearing on a petition for rehabilitative release is to be held in the Superior Court in the county in which the incarcerated person was originally sentenced and in accordance with the Rules of Court. In addition to other service requirements under the bill, the county prosecutor or the director, as appropriate, is required to provide a copy of the petition for rehabilitative release to any victim or family member of a victim entitled to notice relating to a parole or the consideration of a parole under current law. The victim or family member also is to be notified of their opportunity to supplement the report to be issued under the bill with a statement attached to the report, a written or videotaped statement at the hearing on the petition, or to testify to the court at the time of the hearing.

Upon consideration of a petition and following a hearing, the Superior Court may modify, reduce, or suspend an incarcerated person's sentence if the court finds by clear and convincing evidence that:

- the incarcerated person is not a danger to the safety of any person or the community;
- the incarcerated person demonstrates a readiness for reentry, which shall be demonstrated by, among other things, significant efforts to participate in educational, therapeutic, or vocational opportunities while incarcerated; and
- the interests of justice warrant a sentence modification.

1       The court is required to issue a written order stating the reasons  
2 for granting or denying modification.

3       In determining whether the foregoing standards are met, the  
4 court is required to consider a list of factors enumerated in the bill.  
5 An incarcerated person who receives a modified sentence under the  
6 bill also is to be sentenced to a five-year term of parole supervision.  
7 An order for rehabilitative release under the bill is not to become  
8 final for 10 days in order to permit the prosecution an opportunity  
9 to appeal the court's order. A petitioner may also appeal a denied  
10 petition.