

SUPREME COURT OF NEW JERSEY
084412

FILED

MAY 11 2020

Heather J. Baker
CLERK

In the Matter of the Request to :
Modify Prison Sentences, Expedite :
Parole Hearings, and Identify :
Vulnerable Prisoners :

ORDER TO
SHOW CAUSE

This matter having come before the Court on the request for relief filed jointly by the New Jersey Office of the Public Defender and the American Civil Liberties Union of New Jersey, seeking the Court's consideration of a proposed Order to Show Cause (see attached) designed to address the release of certain individuals serving sentences in state prisons and juvenile facilities; and

The Court, on its own motion, having relaxed the Rules of Court to permit the filing of this request for relief directly with the Supreme Court, based on the dangers posed by COVID-19, and the statewide impact of the nature of the request in light of the Public Health Emergency and State of Emergency declared by the Governor, see Executive Order No. 103 (Mar. 9, 2020);

And for good cause shown; it is

ORDERED that the Office of the Public Defender, the American Civil Liberties Union of New Jersey, the Attorney General, the Department of Corrections, the State Parole Board, and the County Prosecutors Association

shall file briefs on the schedule set forth below addressing the issue of why an Order should not be entered granting the relief requested in paragraphs A through D of the proposed order, specifically:

A. Modifying the sentence, pursuant to R. 3:21-10(b)(2), to allow for release of any defendant, other than those described in Paragraph A(1) or A(2), currently serving a prison or Juvenile Justice Commission sentence with a maximum release date within the next 12 months. The custodial portion of the sentence shall be converted to parole supervision or terminated, at the discretion the Court, after consultation with counsel and the State Parole Board.

- 1. Modification of sentence pursuant to this Order shall not be available to defendants convicted or adjudicated of violent crimes subject the No Early Release Act (N.J.S.A. 2C:43-7.2.), other than second-degree robbery and second-degree burglary. See New Jersey Criminal Sentencing And Disposition Commission Annual Report November 2019, Recommendation 3 (identifying those crimes as unlike other NERA crimes and deserving of lesser punishment).*
- 2. Where the County Prosecutor or Attorney General objects to the release of a defendant described in Paragraph A, they*

shall promptly file a written objection, which shall explain why the early release of the defendant would pose a significant risk to the safety of the public.

a. The Court shall appoint judges or Special Masters to address the cases in which an objection to release has been raised.

b. Judges or Special Masters shall presume that sentences should be modified, unless they find, by a preponderance of the evidence, that public safety concerns overcome the presumption.

c. Objections, and if required, appeals, shall be addressed on an expedited basis.

3. County Prosecutors and other law enforcement agencies shall, in the circumstances described below and to the extent practicable, provide notice to victims of the accelerated release of inmates.

a. In cases involving domestic violence, notification shall be made. N.J.S.A. 2C:25-26.1. Law enforcement shall contact the victim using the information provided on

the “Victim Notification Form.” Attorney General Law Enforcement Directive No. 2005-5.

i. Where the information provided on the “Victim Notification Form” does not allow for victim contact, the Prosecutor shall notify the Attorney General.

ii. If the Attorney General, or his designee, is convinced that law enforcement has exhausted all reasonable efforts to contact the victim, he may relax the obligations under N.J.S.A. 2C:25-26.1.

b. In other cases with a known victim, law enforcement shall make all reasonable efforts to notify victims of the defendant’s accelerated release.

B. Ordering the State Parole Board to:

1. Expedite consideration for parole-eligible defendants who are older than 60 or at particularly high risk of death from COVID-19 as a result of other health concerns.

2. Reconsider parole denials issued within the past year to determine whether, in light of the public health crisis, parole could be granted in any cases where it was initially denied.

C. *Requiring the Department of Corrections to identify for the Court and counsel any defendant who is particularly vulnerable to COVID-19 as a result of age or health condition.*

1. *Within three (3) days, the Department shall provide a list of defendants who are particularly susceptible to death or severe complications from COVID-19, using guidelines from the Centers for Disease Control.*

a. *The list, which contains sensitive medical information, shall be provided to the Court and counsel under seal.*

b. *The list shall exclude defendants who have been convicted [of] a crime pursuant to N.J.S.A. 2C:11-3, N.J.S.A. 2C:11-4, N.J.S.A. 2C:14-2, N.J.S.A. 2C:15-1, N.J.S.A. 2C:13-1, or N.J.S.A. 2C:12-1b.*

c. *Within five (5) days of receipt of the list, County Prosecutors and/or the Attorney General shall provide a list of names of those defendants to whom they will object to medical furlough pursuant to N.J.S.A. 30:4-91.3 or a sentence modification pursuant to R. 3:21-10(b)(2).*

2. *Where no objection has been filed, the Department of Corrections shall grant a medical furlough.*
3. *If the Department of Corrections does not grant a medical furlough, the Court shall modify the sentence, pursuant to R. 3:21-10(b)(2), to allow for immediate release. If the Court modifies the sentence, the custodial portion of the sentence shall be converted to parole supervision or terminated, at the discretion the Court, after consultation with counsel and the State Parole Board.*
4. *Where the prosecutor and/or Attorney General objects to a defendant's release pursuant to Paragraph (C)(1)(c), they shall promptly file a written objection that shall explain why the furlough or early release of the defendant would pose a significant risk to the safety of the public.*
 - a. *The Court shall appoint judges or Special Masters to address the cases in which an objection to release has been raised.*
 - b. *Judges or Special Masters shall presume that furloughs should be granted or sentences should be modified,*

unless they find, by a preponderance of the evidence, that public safety concerns overcome the presumption.

c. Objections, and if required, appeals, shall be addressed on an expedited basis.

5. County Prosecutors and other law enforcement agencies shall, in the circumstances described below and to the extent practicable, provide notice to victims of the accelerated release of inmates.

a. In cases involving domestic violence, notification shall be made. N.J.S.A. 2C:25-26.1. Law enforcement shall contact the victim using the information provided on the "Victim Notification Form." Attorney General Law Enforcement Directive No. 2005-5.

i. Where the information provided on the "Victim Notification Form" does not allow for victim contact, the Prosecutor shall notify the Attorney General.

ii. If the Attorney General, or his designee, is convinced that law enforcement has exhausted all

reasonable efforts to contact the victim, he may relax the obligations under N.J.S.A. 2C:25-26.1.

b. In other cases with a known victim, law enforcement shall make all reasonable efforts to notify victims of the defendant's accelerated release.

D. Granting such other relief as the Court deems equitable and just.

The Office of the Public Defender and the American Civil Liberties Union of New Jersey shall file briefs on or before May 14, 2020. The Office of the Attorney General, the Department of Corrections, the State Parole Board, and the County Prosecutors Association shall file responsive briefs on or before May 19, 2020. The Office of the Public Defender and the American Civil Liberties Union of New Jersey may file reply briefs by May 20, 2020. All briefs shall be submitted in PDF format and emailed to the Supreme Court Emergent Matter inbox.

In addition to addressing the points enumerated above, the parties' briefs should (1) set forth their positions on the Court's authority to grant the relief requested; and (2) provide updated information on the status of the implementation of Executive Order No. 124 (Apr. 10, 2020) (establishing a

process by which certain at-risk inmates may be granted temporary reprieve during the public health emergency).

For the Court,

A handwritten signature in blue ink, appearing to read "Stuart Rabner". The signature is fluid and cursive, with a large initial "S" and "R".

Chief Justice Stuart Rabner

Date: May 11, 2020

Attachment

SUPREME COURT OF NEW JERSEY

WHEREAS, on March 11, 2020, COVID-19 was declared to be a global pandemic by the World Health Organization ("WHO"); and

WHEREAS, on March 13, 2020, the President of the United States declared a national emergency pursuant to his constitutional and statutory powers, including those granted by Sections 201 and 301 of the National Emergencies Act (50 U.S.C. § 1601, et seq.) and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5); and

WHEREAS, in light of the dangers posed by COVID-19, the Governor of New Jersey issued Executive Order No. 103 (2020) on March 9, 2020, which declared both a Public Health Emergency and State of Emergency; and

WHEREAS, to further protect the health, safety, and welfare of New Jersey residents by, among other things, reducing the rate of community spread of COVID-19, the Governor issued Executive Order No. 104 (2020) on March 16, 2020, which established statewide social mitigation strategies for combatting COVID-19; and

WHEREAS, to further limit the spread of COVID-19, the Governor issued Executive Order No. 107 (2020) on March 21, 2020, superseding prior orders to declare that all New Jersey residents are to remain in their homes subject to certain exceptions, all non-essential businesses are to close, and all social gatherings of any size are to be canceled; and

WHEREAS, the Governor issued Executive Order No. 119 (2020) on April 7, 2020, to declare that the Public Health Emergency continues to exist and that all previous Executive Orders adopted to respond the COVID-19 outbreak remain in full force and effect; and

WHEREAS, as of April 7, 2020, according to the WHO, there were more than 1,279,722 confirmed cases of COVID-19 worldwide, with over 68,766 of those cases having resulted in death; and

WHEREAS, as of April 7, 2020, according to the Centers for Disease Control and Prevention ("CDC"), there were more than 374,329 confirmed cases of COVID-19 in the United States, with 12,064 of those cases having resulted in death; and

WHEREAS, as of April 7, 2020, there were 44,416 positive cases of COVID-19 in New Jersey, spread across every county, with 1,232 of those cases having resulted in death; and

WHEREAS, as of April 7, 2020, the United States has reported more cases of COVID-19 than any other country, and New Jersey has reported more cases than any U.S. state after New York;

WHEREAS, state and federal public health experts, including officials at CDC, believe that infections will continue to spread at exponential rates unless aggressive action is taken to minimize person-to-person contacts and to reduce any unnecessary interactions; and

WHEREAS, the CDC has advised that COVID-19 spreads most frequently through person-to-person contact when individuals are within six feet or less of one another; and

WHEREAS, as a result, the CDC has recommended that individuals practice "social distancing" to prevent community spread of the virus; and

WHEREAS, the CDC has defined social distancing as the practice of "remaining out of congregate settings, avoiding mass gatherings, and maintaining distance (approximately 6 feet or 2 meters) from others when possible"; and

WHEREAS, social distancing measures are required for a period of as-yet-undetermined duration; and

WHEREAS, the CDC has identified individuals with increased risks of severe disease from COVID-19, including individuals sixty-five years or older and individuals with underlying conditions, including asthma, HIV, heart conditions, immune diseases, liver disease, kidney disease, obesity, or diabetes;¹ and

WHEREAS, the risk of infection in correctional institutions is extraordinary, as incarcerated people cannot control the people

¹ Centers for Diseases Control and Prevention, *People Who Are at Higher Risk for Severe Illness* (April 2, 2020). Available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>

with whom they have contact and effectively practice social distancing;² facilities have limited means to implement protective measures such as avoiding communal settings and frequent disinfection of high-use surfaces;³ and pre-existing conditions are prevalent among incarcerated individuals;⁴

WHEREAS, courts throughout the country have recognized that medical experts agree on these dire risks of the spread of COVID-19 in correctional facilities;⁵ and

² See, e.g., *United States v. Resnick*, No. 1:12-cr-00152-CM, 2020 U.S. Dist. LEXIS 59091 at *19-*20 (S.D.N.Y. April 2, 2020) (granting compassionate release and recognizing "the limitations in a prison environment (even a prison medical center) on practicing the hygienic and social distancing techniques that the Center for Disease Control has put in place to prevent rapid transmission").

³ See, e.g., *United States v. Rodriguez*, No. 2:03-cr-00271-AB-12020, U.S. Dist. LEXIS 58718 at *21 (E.D. Pa. April 1, 2020) (discussing expert certification regarding inability to frequently disinfect communal areas and achieve social distancing and concluding "prisons are ill-equipped to prevent the spread of COVID-19").

⁴ See, e.g., Timothy Williams, Benjamin Weiser and William K. Rashbaum, *The New York Times*, "Jails Are Petri Dishes': Inmates Freed as the Virus Spreads Behind Bars" (March 30, 2020). Available at <https://www.nytimes.com/2020/03/30/us/coronavirus-prisons-jails.html>; Weihua Li and Nicole Lewis, *The Marshall Project*, "This Chart Shows Why The Prison Population Is So Vulnerable to COVID-19" (March 19, 2020). Available at <https://www.themarshallproject.org/2020/03/19/this-chart-shows-why-the-prison-population-is-so-vulnerable-to-covid-19>

⁵ See, e.g., *Thakker v. Doll*, No. 1:20-cv-480, 2020 U.S. Dist. LEXIS 59459, *13 (M.D. Pa. Mar. 31, 2020) ("Various public health officials have warned that the nature of ICE detention facilities makes them uniquely vulnerable to the rapid spread of highly contagious diseases like COVID-19."); *United States v.*

WHEREAS, the Massachusetts Supreme Judicial Court has recognized that “[e]xperts warn that an outbreak in correctional institutions has broader implications for the Commonwealth’s collective efforts to fight the pandemic” and “agree[d] that the situation is urgent and unprecedented, and that a reduction in the number of people who are held in custody is necessary[;]”⁶ and

WHEREAS, in the March 22, 2020 Consent Order entered by this Court regarding the release of county jail inmates, the parties acknowledged that “having reviewed certifications from healthcare professionals regarding the profound risk posed to people in correctional facilities arising from the spread of COVID-19[,]” they “agree[d] that the reduction of county jail populations, under appropriate conditions, is in the public interest to mitigate risks imposed by COVID-19;” and

WHEREAS, COVID-19 infections have rapidly emerged in correctional facilities throughout the country and in New Jersey; and

Davis, No.: ELH-20-09, 2020 U.S. Dist. LEXIS 55310, *13 (D. Md. Mar. 30, 2020) (“Experts agree that pretrial detention facilities are poorly equipped to manage a crisis resulting from this potentially deadly, highly contagious novel coronavirus within their walls.”).

⁶ *Committee for Public Counsel Services v. Chief Justice of the Trial Court*, No. SJC-12926, 2020 Mass. LEXIS 191 at *10, *24 (Mass. April, 3 2020)

WHEREAS, as of April 7, 2020, the Federal Bureau of Prisons reported that 241 incarcerated people and 72 staff members have tested positive for COVID-19 in its facilities, and 8 incarcerated people have died;⁷ and

WHEREAS, at a federal prison in Oakdale, Louisiana, at least five incarcerated people have died from COVID-19 and at least eighteen incarcerated people and five staff members have tested positive for COVID-19;⁸ and

WHEREAS, on March 20, 2020, United States Attorney General William Barr issued a directive ordering the Director of the Bureau of Prisons to "prioritiz[e] home confinement as appropriate in response to the COVID-19 pandemic . . . to protect the health and safety of BOP personnel and the people in our custody."⁹

WHEREAS, the Federal Bureau of Prisons began a 14-day lockdown for all facilities on April 1, 2020, to combat the spread of COVID-19;¹⁰ and

⁷ <https://www.bop.gov/coronavirus/>

⁸ Rich Shapiro, *NBC News*, "1st Prison Inmate to die of Coronavirus Wrote Heartbreaking Letter to Judge" (April 5, 2020). Available at <https://www.nbcnews.com/news/us-news/1st-federal-inmate-die-coronavirus-wrote-heartbreaking-letter-judge-n1176961>

⁹ <https://www.justice.gov/file/1262766/download>

¹⁰ Joe Atmonavage, *NJ Advance Media for NJ.com*, "Federal Prisons put Inmates on 14-day Lockdown in Attempt to Prevent Coronavirus Outbreak" (April 1, 2020). Available at <https://www.nj.com/coronavirus/2020/04/federal-prisons-put->

WHEREAS, COVID-19 is already spreading through New Jersey correctional institutions, with the Department of Corrections reporting that 67 employees, 5 people incarcerated in state prisons, and 3 people incarcerated in halfway houses having tested positive for COVID-19 as of April 7, 2020;¹¹ and

WHEREAS, the number of documented cases necessarily underestimates the total number of cases due to the limited testing capacity, with only ten State incarcerated people being tested as of April 2, 2020,¹² and

WHEREAS, at least 3 incarcerated people at the Bergen County Jail have tested positive for COVID-19;¹³ at least 6 incarcerated people at Delaney Hall, a satellite facility of the Essex County

[inmates-on-14-day-lockdown-in-attempt-to-prevent-coronavirus-outbreak.html](#)

¹¹ <https://www.state.nj.us/corrections/pages/COVID19Updates.shtml>

¹² Blake Nelson and S.P. Sullivan, *NJ Advance Media*, "Coronavirus spreads in N.J. prisons as inmates and officers say state is risking their health" (April 4, 2020) (noting that 179 inmates and more than 100 officers are in quarantine), Available at <https://www.nj.com/coronavirus/2020/04/inmate-says-she-was-basically-left-for-dead-in-room-at-nj-prison-after-getting-sick-amid-coronavirus-outbreak.html>

¹³ *Insider New Jersey*, "Sheriff Cureton Confirms Two Additional Positive COVID-19 Cases Among Bergen Jail Population" (March 30, 2020). Available at <https://www.insidernj.com/sheriff-cureton-confirms-two-additional-positive-covid-19-cases-among-bergen-jail-population/>

Jail, have tested positive for COVID-19;¹⁴ and at least 22 incarcerated people at the Hudson County Jail have tested positive for COVID-19;¹⁵ and

WHEREAS, at least 3 corrections officers working at the Bergen County and Essex County jails have tested positive for COVID-19¹⁶, and 20 officers at the Morris County jail have tested positive;¹⁷ and

¹⁴ Monsy Alvarado, *NorthJersey.com*, "Essex County Jail Places 78 Inmates in Quarantine After Contact with Someone with Coronavirus" (April 4, 2020). Available at <https://www.northjersey.com/story/news/coronavirus/2020/04/04/nj-coronavirus-78-inmates-essex-county-jail-quarantine/294750001/>

¹⁵ Teri West, *The Jersey Journal for NJ.com*, "Among Hudson County jail employees and inmates, 63 coronavirus cases and another fatality" (April 6, 2020). Available at <https://www.nj.com/hudson/2020/04/among-hudson-county-jail-employees-and-inmates-63-coronavirus-cases-and-another-fatality.html>

¹⁶ Rodrigo Torrejon, *NJ Advance Media for NJ.com*, "Hudson County Jail Correctional Officer, 56, Dies From Coronavirus, Police Union Says" (April 2, 2020). Available at <https://www.nj.com/coronavirus/2020/04/hudson-county-jail-correctional-officer-56-dies-from-coronavirus.html>

¹⁷ Rob Jennings, *NJ Advance Media for NJ.com*, "This N.J. county jail is in lockdown as coronavirus spreads to officers and inmates" (April 6, 2020). Available at <https://www.nj.com/coronavirus/2020/04/this-nj-county-jail-is-in-lockdown-as-coronavirus-spreads-to-officers-and-inmates.html>

WHEREAS, the Department of Corrections suspended all visitation at state prisons and halfway houses on March 14, 2020;¹⁸ and

WHEREAS, hundreds of New Jersey correctional staff and incarcerated people are in quarantine;¹⁹ and

WHEREAS, incarcerated people at Edna Mahan Correctional Facility have reported being isolated without adequate care after developing symptoms of COVID-19;²⁰ and

WHEREAS, PBA Local #105, the major union representing State correctional police officers, has formally requested hazard pay

¹⁸ Brianna Kudisch, *NJ Advance Media for NJ.com*, "Visits at N.J. Prisons, Halfway Houses Temporarily Suspended Over Coronavirus Concerns" (March 14, 2020). Available at <https://www.nj.com/news/2020/03/visits-at-nj-prisons-halfway-houses-temporarily-suspended-over-coronavirus-concerns.html>

¹⁹ Blake Nelson and S.P. Sullivan, *NJ Advance Media*, "Coronavirus spreads in N.J. prisons as inmates and officers say state is risking their health" (April 4, 2020) (noting that 179 inmates and more than 100 officers are in quarantine), Available at <https://www.nj.com/coronavirus/2020/04/inmate-says-she-was-basically-left-for-dead-in-room-at-nj-prison-after-getting-sick-amid-coronavirus-outbreak.html>; Monsy Alvarado, *NorthJersey.com*, "Essex County Jail Places 78 Inmates in Quarantine After Contact with Someone with Coronavirus" (April 4, 2020). Available at <https://www.northjersey.com/story/news/coronavirus/2020/04/04/nj-coronavirus-78-inmates-essex-county-jail-quarantine/2947500001/>

²⁰ Joe Atmonavage, *NJ Advance Media for NJ.com*, "Inmate Says She Was Left 'Basically for Dead' in room at N.J. Prison After Getting Sick Amid Coronavirus Outbreak" (April 6, 2020), Available at <https://www.nj.com/coronavirus/2020/04/inmate-says-she-was-basically-left-for-dead-in-room-at-nj-prison-after-getting-sick-amid-coronavirus-outbreak.html>

and additional personal protection equipment to address the dire circumstances in State institutions;²¹ and

WHEREAS, at least 3 correctional staff have already died from COVID-19, including 2 nurses and 1 corrections officer from the Hudson County Jail;²²

WHEREAS, in response to a request from the Public Defender based on the then-existing risks from COVID-19, the Court ordered parties to mediate a request to suspend or commute the sentences of jail sentences; and

WHEREAS, after mediation, the Public Defender, the American Civil Liberties Union of New Jersey, the Attorney General, and the County Prosecutors Association of New Jersey signed a consent Order setting forth a procedure for the release of hundreds of county jail inmates; and

WHEREAS, the Court maintains the authority to modify sentences of people in jails and prisons where health needs require it;

IT IS on this _____ day of April, 2020,

²¹ Letter Re: Police Benevolent Associations Local #105 Hazardous Duty Pay (March 23, 2020). Available at <https://www.documentcloud.org/documents/6820750-DOC-WORKERS-HAZARD-PAY.html>

²² Teri West, *The Jersey Journal*, "Second Nurse Who Worked at Hudson County Jail Dies" (April 6, 2020). Available at <https://www.nj.com/hudson/2020/04/second-nurse-who-worked-at-hudson-county-jail-dies.html>

ORDERED that the Attorney General, County Prosecutors Association of New Jersey, Department of Corrections, New Jersey State Parole Board, Office of the Public Defender and the American Civil Liberties Union of New Jersey should show cause on the _____ day of April, 2020, or as soon thereafter as counsel can be heard, why an Order should not be entered:

A. Modifying the sentence, pursuant to R. 3:21-10(b)(2), to allow for release of any defendant, other than those described in Paragraph A(1) or A(2), currently serving a prison or Juvenile Justice Commission sentence with a maximum release date within the next 12 months. The custodial portion of the sentence shall be converted to parole supervision or terminated, at the discretion the Court, after consultation with counsel and the State Parole Board.

1. Modification of sentence pursuant to this Order shall not be available to defendants convicted or adjudicated of violent crimes subject the No Early Release Act (N.J.S.A. 2C:43-7.2.), other than second-degree robbery and second-degree burglary. *See New Jersey Criminal Sentencing And Disposition Commission Annual Report November 2019, Recommendation 3* (identifying those crimes as unlike other NERA crimes and deserving of lesser punishment).

2. Where the County Prosecutor or Attorney General objects to the release of a defendant described in Paragraph A, they shall promptly file a written objection, which shall explain why the early release of the defendant would pose a significant risk to the safety of the public.

a. The Court shall appoint judges or Special Masters to address the cases in which an objection to release has been raised.

b. Judges or Special Masters shall presume that sentences should be modified, unless they find, by a preponderance of the evidence, that public safety concerns overcome the presumption.

c. Objections, and if required, appeals, shall be addressed on an expedited basis.

3. County Prosecutors and other law enforcement agencies shall, in the circumstances described below and to the extent practicable, provide notice to victims of the accelerated release of inmates.

a. In cases involving domestic violence, notification shall be made. N.J.S.A. 2C:25-26.1. Law enforcement shall contact the victim using the information provided on the "Victim

Notification Form." Attorney General Law Enforcement Directive No. 2005-5.

i. Where the information provided on the "Victim Notification Form" does not allow for victim contact, the Prosecutor shall notify the Attorney General.

ii. If the Attorney General, or his designee, is convinced that law enforcement has exhausted all reasonable efforts to contact the victim, he may relax the obligations under N.J.S.A. 2C:25-26.1.

b. In other cases with a known victim, law enforcement shall make all reasonable efforts to notify victims of the defendant's accelerated release.

B. Ordering the State Parole Board to:

1. Expedite consideration for parole-eligible defendants who are older than 60 or at particularly high risk of death from COVID-19 as a result of other health concerns.

2. Reconsider parole denials issued within the past year to determine whether, in light of the public health crisis, parole could be granted in any cases where it was initially denied.

C. Requiring the Department of Corrections to identify for the Court and counsel any defendant who is particularly vulnerable to COVID-19 as a result of age or health condition.

1. Within three (3) days, the Department shall provide a list of defendants who are particularly susceptible to death or severe complications from COVID-19, using guidelines from the Centers for Disease Control.

a. The list, which contains sensitive medical information, shall be provided to the Court and counsel under seal.

b. The list shall exclude defendants who have been convicted a crime pursuant to N.J.S.A. 2C:11-3, N.J.S.A. 2C:11-4, N.J.S.A. 2C:14-2, N.J.S.A. 2C:15-1, N.J.S.A. 2C:13-1, or N.J.S.A. 2C:12-1b.

c. Within five (5) days of receipt of the list, County Prosecutors and/or the Attorney General shall provide a list of names of those defendants to whom they will object to medical furlough pursuant to N.J.S.A. 30:4-91.3 or a sentence modification pursuant to *R. 3:21-10(b)(2)*.

2. Where no objection has been filed, the Department of Corrections shall grant a medical furlough.

3. If the Department of Corrections does not grant a medical furlough, the Court shall modify the sentence, pursuant to R. 3:21-10(b)(2), to allow for immediate release. If the Court modifies the sentence, the custodial portion of the sentence shall be converted to parole supervision or terminated, at the discretion the Court, after consultation with counsel and the State Parole Board.
4. Where the prosecutor and/or Attorney General objects to a defendant's release pursuant to Paragraph (C)(1)(c), they shall promptly file a written objection that shall explain why the furlough or early release of the defendant would pose a significant risk to the safety of the public.
 - a. The Court shall appoint judges or Special Masters to address the cases in which an objection to release has been raised.
 - b. Judges or Special Masters shall presume that furloughs should be granted or sentences should be modified, unless they find, by a preponderance of the evidence, that public safety concerns overcome the presumption.
 - c. Objections, and if required, appeals, shall be addressed on an expedited basis.

5. County Prosecutors and other law enforcement agencies shall, in the circumstances described below and to the extent practicable, provide notice to victims of the accelerated release of inmates.

a. In cases involving domestic violence, notification shall be made. N.J.S.A. 2C:25-26.1. Law enforcement shall contact the victim using the information provided on the "Victim Notification Form." Attorney General Law Enforcement Directive No. 2005-5.

i. Where the information provided on the "Victim Notification Form" does not allow for victim contact, the Prosecutor shall notify the Attorney General.

ii. If the Attorney General, or his designee, is convinced that law enforcement has exhausted all reasonable efforts to contact the victim, he may relax the obligations under N.J.S.A. 2C:25-26.1.

b. In other cases with a known victim, law enforcement shall make all reasonable efforts to notify victims of the defendant's accelerated release.

D. Granting such other relief as the Court deems equitable and just.

For the Court,

Chief Justice