

 Corrections and Community Supervision DIRECTIVE	TITLE		NO. 8400
	Certificates of Relief from Disabilities Pre-Release		DATE 03/24/2023
SUPERSEDES DIR #8400 Dtd. 08/03/21	DISTRIBUTION A B	PAGES PAGE 1 OF 5	DATE LAST REVISED
REFERENCES (Include but are not limited to) Correction Law; Executive Law; Penal Law; Public Health Law; Vehicle and Traffic Law; Directive #9104	APPROVING AUTHORITY 		

I. DESCRIPTION: Correction Law §703 provides that the Department of Corrections and Community Supervision (DOCCS) has the power and authority to issue a Certificate of Relief from Disabilities to any eligible person under the jurisdiction of the Department. A Certificate of Relief from Disabilities may be issued consistent with the rehabilitation of the individual and consistent with the public interest.

Pursuant to Correction Law §701, for each crime listed on the Certificate of Relief from Disabilities, the individual will be relieved of any automatic forfeiture of any license, permit, or any other right or privilege, and any bar to employment.

NOTE:

- A Certificate of Relief from Disabilities cannot overcome automatic forfeiture resulting from convictions for violations of specific sections of Public Health Law or Vehicle and Traffic Laws.
- A Certificate of Relief from Disabilities cannot permit the convicted person to retain or be eligible for public office, and it does not void the conviction as in a pardon (Correction Law §701 and §706).
- A Certificate of Relief from Disabilities cannot prevent any judicial, administrative, licensing, or other body, board, or authority from relying upon the conviction as the basis for exercise of its discretionary authority to suspend, revoke, refuse to issue, or refuse to renew any license, permit, or other authority or privilege (Correction Law §701(3)).
- A Certificate of Relief from Disabilities cannot remove any legal obligations that arise by virtue of a conviction including, but not limited to, the obligation to pay any court-imposed surcharges, fines, fees, or restitution and for a Registered Sex Offender, the need to comply with ongoing registration and verification requirements under Correction Law Article 6-C.

Correction Law Article 23-A safeguards against unfair discrimination against persons previously convicted of one or more criminal offenses by a public agency or private employer. Executive Law Section 296(15) and Correction Law §752 in pertinent part provide that no application for any license or employment shall be denied by reason of the applicant's having previously been convicted of one or more criminal offenses, unless:

- A. There is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought. -OR-
- B. The issuance of the license or granting of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

II. POLICY: Under the direction and supervision of the Deputy Superintendent for Program Services (DSP), the Supervising Offender Rehabilitation Coordinator (SORC), and the Offender Rehabilitation Coordinator (ORC) responsible for preparing incarcerated individuals for Parole Board interviews (discretionary release), Parole Board case reviews (e.g., determinate sentence, merit time determinate, presumptive, etc.), conditional release, release upon the incarcerative maximum expiration (ME) date or upon the post-release supervision maximum expiration (PRSME) date, and re-release following a time assessment imposed for a revocation of parole or post-release supervision shall prepare a [Form #DP-53](#), "Certificate of Relief from Disabilities," for review and consideration by the Superintendent of the assigned facility. Staff shall prepare a certificate for each eligible incarcerated individual approved for release. Staff must ensure that an original certificate form is completed for each eligible incarcerated individual granted discretionary release by the Board of Parole, authorized for release by statute, or authorized for re-release upon completion of a revocation time assessment. The Superintendent shall have the authority to grant or defer the issuance of a Certificate of Relief from Disabilities prior to release to Community Supervision and prior to release upon the incarcerative ME date of the PRSME.

The Superintendent will review the Parole Board Report to determine if the Certificate of Relief should be issued, pursuant to Correction Law 703(3).

- A. The Superintendent will review the incarcerated individual's record and will grant the Certificate if:
1. It is consistent with the rehabilitation of the eligible incarcerated individual.
 2. It is consistent with the public interest.
- B. The Superintendent will defer Certificates of Relief for a period of 24 months if:
1. The incarcerated individual was confined in a disciplinary confinement unit (to include but not be limited to Special Housing Unit, Residential Rehabilitation Unit, Step-Down Program, General Confinement Residential Unit, Correctional Alternative Rehabilitation, Behavioral Health Unit) for any amount of time during the 12-month period prior to the (i) Parole Board interview or case review, (ii) date of the case review by the Superintendent, (iii) conditional release date, or (iv) upon reaching the expiration date of the revocation time assessment.
-OR-
 2. The incarcerated individual has lost any good time during the 12-month period prior to the (i) Parole Board interview or case review, (ii) date of the case review by the Superintendent, (iii) conditional release date, or (iv) upon reaching the expiration date of the revocation time assessment. -OR-
 3. The incarcerated individual is serving a sentence for any felony conviction defined in Penal Law Article(s) 130, 135, 230, 235, 255, 263, 485, or 490. -OR-
 4. The incarcerated individual is serving a sentence for a sexually motivated felony.
-OR-
 5. Issuance of a Certificate of Relief, at the time of release, would be inconsistent with public interest and the rehabilitation of the incarcerated individual. If deferred for the aforementioned reasons, the Superintendent must note the rationale for the deferral action on [Form #CS8400A](#), "Notice of Deferral."

All original Certificates of Relief from Disabilities prepared by facility staff will be approved and signed by the Superintendent and shall be submitted to the Director of the Executive Clemency Bureau and Certificate Review Unit.

Staff from the Executive Clemency Bureau and Certificate Review Unit will perfect the original document by assigning a unique certificate number and this unit will also provide the certificate issuance information to the Division of Criminal Justice Services (DCJS). This unit will maintain a copy on file and send original to the Bureau Chief at the location where the incarcerated individual will be supervised.

- III. ELIGIBILITY:** An eligible person is one who has been convicted of no more than one felony offense. Two or more felony convictions charged in separate counts of one indictment or information shall be deemed one felony for purposes of eligibility for a certificate. Juvenile offenders are eligible to be considered for a Certificate under this same eligibility criteria.

Individuals who are granted youthful offender status do not require a Certificate of Relief from Disabilities. A youthful offender adjudication is not a judgment of conviction for a crime or any other offense and does not operate as a disqualification of any person so adjudged to hold public office or public employment, or to receive any license granted by a public authority. A youthful offender does not incur any civil disabilities.

Incarcerated individuals with any open warrants, detainers, dispositions, or pending charges will not be processed for Certificate consideration until these obligations have been resolved.

- IV. PRE-RELEASE PROCEDURE:** Staff will proceed as follows with regard to the preparation of [Form #DP-53](#) and submission to the Executive Clemency Bureau and Certificate Review Unit:

A. Determination of Eligibility

1. The ORC or Work Release Parole Officer (PO) will determine eligibility based on a review of the EJustice Criminal History Profile (RAP sheet), Presentence Report, and commitment documents. The ORC or Work Release PO will confirm that no unrevoked Certificate of Relief from Disabilities has been issued via a review of the RAP sheet and Case Management System (CMS). The ORC or PO will record the eligible or ineligible status on the Parole Board Report.
2. Eligibility shall be verified at the level of SORC or Senior Parole Officer (SPO).
3. If the eligibility status cannot be determined or resolved at either the level of SORC or SPO, the matter is to be referred to the attention of the Director of the Executive Clemency Bureau and Certificate Review Unit.

- B.** Under the direct supervision of the SORC or Work Release SPO, staff shall record the eligible or ineligible status in CMS utilizing Contact Code CRD and the appropriate Activity Code as listed below for each incarcerated individual:

1. Activity Code EL – Eligible
2. Activity Code IE – Ineligible
3. Activity Code NA – Not Applicable (i.e., YO Adjudication)

If it is determined that the incarcerated individual is eligible as outlined in Section III, but a review of the RAP sheet determines that the individual has an open warrant, detainer, disposition, or pending charges, staff will need to enter two separate Activity Codes under the Contact Code CRD. In these instances, the appropriate Activity Code “EL – Eligible” will be entered into CMS followed by an additional, separate entry of Activity Code “OW – OPEN WAR DET CHARGE.”

- C. The eligible or ineligible status must be accurately recorded in CMS. In the event that an incarcerated individual's eligibility status has changed from the last time that it was recorded (i.e., PVNNT returned on a new felony conviction) or the previous recording was incorrect, CMS must be updated to reflect this change by utilizing Contact Code CRD and Activity Code: "EC – Change in Eligibility."
- Subsequent to entering a change in eligibility, the new eligibility status must be recorded in CMS as outlined in subsection IV-B.
- D. Following completion of the Parole Board, entry of the decisions, and production of the Parole Board post-disposition report, assigned facility staff shall prepare an original certificate for each of the certificate eligible incarcerated individuals approved for release. Eligibility must be verified prior to the preparation of an original certificate. All information must be either typewritten or entered on the certificate via a network desktop device.
- E. Within three days of the completed Parole Board, the original certificates and the community supervision case folders of the eligible incarcerated individuals shall be provided to the Superintendent. The Superintendent shall authorize issuance of the certificate by signing and dating the original certificate, or the Superintendent shall defer issuance of the certificate for the reasons/convictions listed in Section II. The Superintendent shall notify the incarcerated individual in writing of the deferral on [Form #CS8400A](#), "Notice of Deferral." A copy of the deferral notification is to be placed in the incarcerated individual's Community Supervision file. It is the responsibility of the SORC to record issuance and deferral action in the CMS record of the incarcerated individual by utilizing the Contact Code CRD and the appropriate Activity Code for each incarcerated individual, as listed below.
1. Activity Code I – Issued Superintendent
 2. Activity Code DE – Deferred
- F. ORCs assigned to Lakeview Shock Incarceration Correctional Facility (where there is no on-site Parole Board panel) shall send the completed certificates to the Certificate Review Unit at the same time that the cases are submitted for review to the Board of Parole. This will ensure that there is sufficient time for certificate review, processing, and issuance prior to release.
- G. The SORC or Work Release SPO is responsible for reviewing and verifying the accuracy of the information recorded on the certificates prior to submission to the Certificate Review Unit.
- H. The SORC or Work Release SPO shall ensure that the original certificates and original Notice of Deferral Forms ([Form #CS8400A](#)), approved by the Superintendent, are compiled and mailed to the attention of the Director of the Executive Clemency Bureau and Certificate Review Unit, NYS Department of Corrections and Community Supervision, The Harriman State Campus, 1220 Washington Avenue, Albany, New York 12226.
- I. With regard to conditional release cases that are not subject to Parole Board review for imposition of conditions prior to release, staff shall send the original certificate and original Notice of Deferral Form ([Form #CS8400A](#)) as part of the Pre-Release Certificate of Release from Disabilities Monthly Report, [Form #CS8400B](#), four months prior to release. All documents should be mailed to the attention of the Director of the Executive Clemency Bureau and Certificate Review Unit.

- J. In the event of an emergency release case where there is no opportunity to process the case prior to release, staff shall note the eligibility status in the CMS record of the incarcerated individual. The assigned PO will be responsible for reviewing the case and making the determination regarding submission to the Certificate Review Unit.
- K. If there is a change in the incarcerated individual's status that affects their release (e.g., rescission of an open date, loss of good time, or change in parole eligibility), the SORC or Work Release SPO shall immediately notify the Director of the Executive Clemency Bureau and Certificate Review Unit via e-mail communication. The e-mail notification shall include the name of the incarcerated individual, DIN, NYSID, name of the facility, and a brief statement as to the reason(s) for the change in release eligibility.
- The change in release eligibility is to be recorded in the CMS record of the incarcerated individual.
- L. With regard to incarcerated individuals who will be released upon reaching their incarcerative ME date or the PRSME date, facility staff shall determine each incarcerated individual's eligibility four months prior to the expiration of the sentence or period of post-release supervision. Certificates for eligible incarcerated individuals will be immediately processed and prepared in the same manner as all other pre-release certificates. Staff shall send the original certificate with a cover memorandum to the attention of the Director of the Executive Clemency Bureau and Certificate Review Unit. This will ensure that there is sufficient time for certificate review, processing, and issuance prior to release. Once perfected and assigned a certificate number, the Certificate Review Unit will send the original certificate to the Inmate Records Coordinator (IRC) at the incarcerated individual's correctional facility to ensure that the incarcerated individual receives the certificate at the time of release.
- M. Superintendents or their designees shall complete the Pre-Release Certificate from Disabilities Monthly Report ([Form #CS8400B](#)) that includes all of the following information:
1. The number of cases eligible for review. -AND-
 2. The Name and DIN of the incarcerated individual.- AND-
 3. The date the certificate was issued. -OR-
 4. The date the certificate was deferred.
- The monthly report pertains to all eligible incarcerated individuals being considered during the report month. Superintendents and/or their designees shall utilize the report format Pre-Release Certificate from Disabilities Monthly Report ([Form #CS8400B](#)) as provided by the Director of the Executive Clemency Bureau and Certificate Review Unit. Monthly reports are to be received by the Executive Clemency Bureau and Certificate Review Unit no later than the 15th of the month following issuance and/or deferral.
- N. If a facility has no eligible cases for review, a Pre-Release Certificate from Disabilities Monthly Report ([Form #CS8400B](#)) must still be completed with zero (0) listed as the number of eligible cases.