

 <b>Corrections and Community Supervision</b>  <b>DIRECTIVE</b>	TITLE		NO. 8400
	<b>Certificates of Relief from Disabilities Pre-release</b>		DATE 11/14/2016
SUPERSEDES DIR #8400 Dtd. 6/28/2013	DISTRIBUTION A B	PAGES PAGE 1 OF 5	DATE LAST REVISED
REFERENCES (Include but are not limited to): Directive #9104: Correction Law, Executive Law, Penal Law, Public Health Law, Vehicle and Traffic Laws	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 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:

- There is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought; or

- 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 inmates for Parole Board interviews (discretionary release), Parole Board case reviews (e.g., determinate sentence, merit determinate, presumptive etc.), conditional release, release upon the incarcerative maximum expiration (ME) date release or upon the post-release supervision maximum expiration (PRSME), 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 owning facility. Staff shall prepare a certificate for each eligible inmate approved for release. Staff must ensure that an original certificate form is completed for each eligible inmate 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). The Superintendent will review the inmate's record and will grant the Certificate if:

- It is consistent with the rehabilitation of the eligible inmate; and
- It is consistent with the public interest.

The Superintendent will defer Certificates of Relief for 24 months if:

- The inmate was confined in a Special Housing Unit for any amount of time during the year prior to his or her Parole Board appearance, conditional release, or re-release; or
- The inmate has lost any good time during the year prior to his or her Parole Board appearance, conditional release or re-release; or
- The inmate is serving time for any of the following B and C felony sex offenses:
  - Rape in the First Degree – Penal Law Section 130.35
  - Criminal Sexual Act in the First Degree (formerly Sodomy 1) – Penal Law Section 130.50
  - Aggravated Sexual Abuse in the First Degree – Penal Law Section 130.70
  - Course of Sexual Conduct Against a Child in the First Degree – Penal Law Section 130.75
  - Incest in the First Degree – Penal Law Section 255.27
  - An attempt to commit any of the above listed offenses
  - Aggravated Sexual Abuse in the Second Degree – Penal Law Section 130.6

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 inmate 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.

#### **IV. PRE-RELEASE PROCEDURE**

- A. Staff will proceed as follows with regard to the preparation of [Form #DP-53](#), "Certificate of Relief from Disabilities," and submission to the Executive Clemency Bureau and Certificate Review Unit:
1. Determination of Eligibility:
    - a. 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 PO will record the eligible or ineligible status on the Parole Board Report.
    - b. Eligibility shall be verified at the level of SORC or SPO.
    - c. 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.
  2. Owning facility staff under the direct supervision of the SORC or Work Release SPO shall record the eligible or ineligible status on the Guidelines Entry System (GES) Parole Board Decision Notice. The eligible or ineligible status must be accurately recorded in the GES program.
  3. Following completion of the Parole Board, entry of the decisions, and production of the Parole Board post-disposition report, owning facility staff shall prepare an original certificate for each of the certificate eligible inmates approved for release. Eligibility must be verified prior to the preparation of original certificate. All information must be either typewritten or entered on the certificate via a network desktop device.

4. Within three days of the completed Parole Board, the original certificates and the community supervision case folders of the eligible inmates 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-Policy. The Superintendent shall notify the inmate in writing of deferral on [Form #8400ACS](#), "Notice of Deferral." A copy of the deferral notification is to be placed in the inmate's community supervision file. It is the responsibility of the SORC to record issuance and deferral action in the Case Management System (CMS) record of the inmate.
5. ORCs assigned to Shock facilities (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.
6. 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.
7. The SORC or Work Release SPO shall ensure that the original certificates 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.
8. 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 with a cover memorandum to the attention of the Director of the Executive Clemency Bureau and Certificate Review Unit.
9. 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 subject. The assigned field PO will be responsible for reviewing the case and making the determination regarding submission to the Certificate Review Unit.
10. If there is a change in the inmate's status that affects his or her 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 inmate, 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 inmate.

11. With regard to inmates who will be released upon reaching their incarcerative ME date or the PRSME date, facility staff shall determine each inmate's eligibility four months prior to the expiration of the sentence or period of post-release supervision. Certificates for eligible inmates 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 inmate's correctional facility to ensure that the inmate receives the certificate at the time of release.
12. Superintendents or their designees shall complete a monthly report that includes: the name, DIN, date the certificate was issued, or date the certificate was deferred for all eligible inmates during the report month. Superintendents and/or their designees shall utilize the report format as provided by the Director of the Executive Clemency Bureau and Certificate Review Unit. Monthly reports are to be submitted to the Executive Clemency Bureau and Certificate Review Unit no later than the fifteenth (15<sup>th</sup>) of the month following issuance and/or deferral.