

 <b>NEW YORK STATE</b>	<b>Corrections and Community Supervision</b>  <b>DIRECTIVE</b>		TITLE  <b>Certificates of Relief from Disabilities Pre-release</b>		NO. 8400
					DATE 08/09/2019
SUPERSEDES DIR# 8400 Dtd. 02/06/18			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. Issuance of a Certificate of Relief from Disabilities restores a person's right to register for or vote in an election.

**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:

- 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 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 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 a period of 24 months if:

- The inmate was confined in a Special Housing 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
- The inmate 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
- The inmate is serving a sentence for any felony conviction defined in Penal Law Article(s) 130, 135, 230, 235, 255, 263, 485, or 490; or
- The inmate is serving a sentence for a sexually motivated felony; or
- Issuance of a Certificate of Relief, at the time of release, would be inconsistent with public interest and the rehabilitation of the inmate. 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 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.

Inmates with any open warrants, detainers, dispositions, or pending charges are not eligible for consideration until these obligations have been resolved.

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

- A. 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:
1. Determination of Eligibility
    - 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 CRD 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.
    - Eligibility shall be verified at the level of SORC or Senior Parole Officer (SPO).
    - 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. Correctional facility staff, under the direct supervision of the SORC or Work Release SPO, shall record the eligible or ineligible status in CMS utilizing Contact Code CRD and the appropriate Activity Code as listed below for each inmate:
    - a. Activity Code EL – Eligible
    - b. Activity Code IE – Ineligible
    - c. Activity Code NA – Not Applicable (i.e., YO Adjudication)
  3. The eligible or ineligible status must be accurately recorded in CMS. In the event that an inmate'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 the following Activity Code:
    - Activity Code EC – Change in EligibilitySubsequent to entering a change in eligibility, the new eligibility status must be recorded in CMS as outlined in Section IV-A-2.



4. 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 inmates 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.
5. 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. The Superintendent shall notify the inmate in writing of the deferral on [Form #CS8400A](#), "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 CMS record of the inmate by utilizing the Contact Code CRD and the appropriate Activity Code for each inmate, as listed below:
  - a. Activity Code I – Issued Superintendent
  - b. Activity Code DE - Deferred
6. 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.
7. 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.
8. 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.
9. 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 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.
10. 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 inmate. The assigned field PO will be responsible for reviewing the case and making the determination regarding submission to the Certificate Review Unit.



11. 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.
12. 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.
13. Superintendents or their designees shall complete the Pre-release Certificate from Disabilities Monthly Report that includes all of the following information:
  - a. The number of cases eligible for review; and
  - b. The Name and DIN of the Inmate; and
  - c. The date the certificate was issued; or
  - d. The date the certificate was deferred

The monthly report pertains to all eligible inmates being considered during the report month. Superintendents and/or their designees shall utilize the report format Pre-Release Certificate from Disabilities Monthly Report 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 15<sup>th</sup> of the month following issuance and/or deferral.
14. If a facility has no eligible cases for review, a Pre-release Certificate from Disabilities Monthly Report must still be completed with zero (0) listed as the number of eligible cases.



# Corrections and Community Supervision

ANDREW M. CUOMO  
Governor

ANTHONY J. ANNUCCI  
Acting Commissioner

## Notice of Deferral

NAME: \_\_\_\_\_ NYSID #: \_\_\_\_\_

DOB: \_\_\_\_\_ FBI #: \_\_\_\_\_

Facility: \_\_\_\_\_ Earliest Release Date: \_\_\_\_\_

Your application for a Certificate of Relief from Disabilities has been deferred for  
\_\_\_\_\_ months. You may reapply in \_\_\_\_\_ (mm/yy).

Superintendent Signature: \_\_\_\_\_ Date: \_\_\_\_\_

### Reason for Deferral:

\_\_\_\_\_ The inmate was confined in a Special Housing 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

\_\_\_\_\_ The inmate has lost 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

\_\_\_\_\_ The inmate is serving a sentence for any felony conviction defined in Penal Law Article(s) 130, 135, 230, 235, 255, 263, 485, or 490; or

\_\_\_\_\_ The inmate is serving a sentence for a sexually motivated felony.

\_\_\_\_\_ The Relief to be granted by the certificate is inconsistent with the public interest

(Rationale Required): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Original – Executive Clemency Bureau

Copy – Superintendent  
Community Supervision Folder  
Inmate

FORM #CS8400A (08/19)  
PHOTOCOPY LOCALLY AS NEEDED



## STATE OF NEW YORK

## CERTIFICATE OF RELIEF FROM DISABILITIES

FOR DEPARTMENT OF CORRECTIONS  
AND COMMUNITY SUPERVISION

Identifying No.

CR#

This certificate is issued to the holder to grant relief from all or certain enumerated disabilities, forfeitures or bars to his employment automatically imposed by law by reason of his conviction of the crime or of the offense specified herein.

This certificate shall NOT be deemed nor construed to be a pardon.

SEE REVERSE SIDE FOR EXPLANATION OF THE LAW GOVERNING THIS CERTIFICATE

The Original Certificate is to be presented to the person to whom awarded. One copy is to be retained by the issuing agency, and one copy is to be filed with the NYS Division of Criminal Justice Services, 4 Tower Place, Albany, NY 12203-3702.

1. For use by DCJS	HOLDER OF CERTIFICATE		3. NYSID Number (If not known, supply fingerprints to DCJS. If fingerprints are unobtainable, complete items 15-18 below)
	2. Last Name, First Name, Middle Initial		
4. Crime or offense for which convicted		5. Date of Arrest	6. Date of Sentence
7. Court of disposition (Court, Part, Term, Venue)		8. Certificate issued by New York State Department of Corrections and Community Supervision	
		10. If this Certificate replaces previously issued Certificate, give date of previous Certificate of Relief from Disabilities	
9. Date this certificate issued		Date: <input checked="" type="checkbox"/> Not applicable	
11. CHECK ONE BOX ONLY			
This certificate shall:			
<input type="checkbox"/> a Relieve the holder of all forfeitures, and of all disabilities and bars to employment, excluding the right to retain or to be eligible for public office, by virtue of the fact that this certificate is issued at the time of sentence. The Date of Sentence in this case must agree with the Date Certificate Issued.			
<input type="checkbox"/> b Relieve the holder of all disabilities and bars to employment, excluding the right to be eligible for public office.			
<input checked="" type="checkbox"/> c Relieve the holder of the forfeitures, disabilities or bars hereinafter enumerated - removes all legal bars and disabilities to employment, license and privilege except those pertaining to firearms under Section 265.01(4) and 400.00 of the Penal Law and except the right to be eligible for public office.			
12. <input type="checkbox"/> This certificate shall be considered permanent.			
<input checked="" type="checkbox"/> This certificate shall be considered temporary until discharged from community supervision. Date of discharge: _____			
After this date, unless revoked earlier by the Department of Corrections and Community Supervision, this certificate shall be considered permanent. A person who knowingly uses or attempts to use a revoked certificate in order to obtain or exercise any right or privilege that (s)he would not be entitled to obtain or to exercise without valid certificate shall be guilty of a misdemeanor.			
13. Signature of issuing official		Print or type name	14. Title
			<b>SUPERINTENDENT</b>
COMPLETE THE FOLLOWING FOR DCJS ONLY IF FINGERPRINTS ARE NOT OBTAINABLE			
15. Sex	16. Race	17. Height	18. Date of Birth (Month, Day, Year)

## **LAWS GOVERNING THE ISSUANCE OF CERTIFICATES OF RELIEF FROM DISABILITIES**

(The laws governing the issuance of certificates of relief from disabilities are set forth in Article 23 of the New York State Correction Law. The excerpts below summarize certain portions of those laws and are set forth merely for convenience. They are not intended as administrative interpretations and they do not relieve any party of full knowledge of and compliance with the applicable provisions of law.)

This certificate is issued to relieve the holder, an "eligible offender" as defined in §700 of the Correction Law, of all or enumerated forfeitures, disabilities, or bars to employment automatically imposed by law by reason of his conviction of the crime or offense specified on the face of this certificate.

This certificate shall be considered a "temporary certificate" where (1) issued by a court to a holder who is under a "revocable sentence" as defined in §700 of the Correction Law and the court's authority to revoke such sentence has not expired, or (2) issued by the Department of Corrections and Community Supervision and the holder is still under the supervision of the Department of Corrections and Community Supervision. Where the holder is under a revocable sentence, this certificate may be revoked by the court for violation of the conditions of such sentence and shall be revoked by the court if it revokes the sentence and commits the holder to an institution under the jurisdiction of the Department of Corrections and Community Supervision. Where the holder is subject to the supervision of the Department of Corrections and Community Supervision, this certificate may be revoked by the Department of Corrections and Community Supervision for violation of the conditions of community supervision or release. Any such revocation shall be upon notice and after an opportunity to be heard. If this certificate is not so revoked, it shall become a permanent certificate upon expiration or termination of the court's authority to revoke the sentence or upon termination of the jurisdiction of the Department of Corrections and Community Supervision over the holder.

### **RIGHTS OF RELIEF FROM DISABILITIES**

- A. Where the certificate is issued by a court at the time sentence is pronounced, it covers forfeitures as well as disabilities. In any other case the certificate applies only to disabilities.
- B. A conviction of the crime or the offense specified on the face of this certificate shall NOT cause automatic forfeiture of any license, permit, employment or franchise, including the right to register for or vote at an election, or automatic forfeiture of any other right or privilege, held by the eligible offender and covered by the certificate. Nor shall such conviction be deemed to be a conviction within the meaning of any provision by law that imposes, by reason of a conviction, a bar to any employment, a disability to exercise any right or a disability to apply for or to receive any license, permit or other authority or privilege covered by the certificate. Provided, however, that no such certificate shall apply, or be construed so as to apply, to the right of such person to retain or to be eligible for public office.
- C. A conviction of the crime or the offense specified on the face of this certificate shall NOT prevent any judicial, administrative, licensing or other body, board or authority from relying upon the conviction specified on the reverse side of this certificate as the basis for the exercise of its discretionary power to suspend, revoke, refuse to issue or renew any license, permit or other authority or privilege.