EXECUTIVE ORDER NO. 124

WHEREAS, on March 9, 2020, through Executive Order No. 103 (2020), the facts and circumstances of which are adopted by reference herein, I declared both a Public Health Emergency and a State of Emergency throughout the State due to the public health hazard created by COVID-19; and

WHEREAS, on April 7, 2020, I issued Executive Order No. 119 (2020), which declared that the Public Health Emergency declared in Executive Order No. 103 (2020) continues to exist; and

WHEREAS, in accordance with N.J.S.A. App. A:9-34 and -51, I reserved the right to utilize and employ all available resources of State government to protect against the emergency created by COVID-19; and

WHEREAS, the Centers for Disease Control and Prevention ("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 as a result, the CDC has recommended that individuals practice "social distancing" to prevent community spread of the virus; and

WHEREAS, as COVID-19 continued to spread across New Jersey and an increasing number of individuals required medical care or hospitalization, I issued a series of Executive Orders pursuant to my authority under the New Jersey Civilian Defense and Disaster Control Act (the "Disaster Control Act") and the Emergency Health Powers Act ("EHPA"), to protect the public health, safety, and welfare against the emergency created by COVID-19, including Executive Order Nos. 104-123 (2020), the facts and circumstances of which are all adopted by reference herein, many of which focused on requiring increased social distancing in the State; and

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

WHEREAS, as both the Federal Government and other states have recognized, maintaining typical social distancing practices in correctional settings may be challenging; and

WHEREAS, there may be individuals currently in the custody of the Department of Corrections ("DOC"), who are serving sentences of more than 364 days, who by virtue of their age and/or underlying medical conditions, face a heightened risk of death or serious injury if they contract COVID-19; and

WHEREAS, DOC has finite capacity within its facilities to provide medical care to inmates who contract COVID-19; and

WHEREAS, because there are challenges associated with maintaining traditional social distancing in correctional settings, in order to protect these particularly vulnerable individuals from a heightened risk of death and serious injury, it may be necessary to take certain emergency steps in order to temporarily remove these individuals from congregate custody; and

WHEREAS, some of these individuals may be eligible for parole and, due to the Public Health Emergency, warrant the quickest feasible review of their parole applications to protect their health, notwithstanding any Future Eligibility Date; and

WHEREAS, the parole process includes established safeguards to ensure that granting parole will not undermine public safety, and that the inmate, if released, will have access to appropriate medical and social services; and

WHEREAS, even if an inmate is ineligible for parole or has not received parole, the Commissioner of DOC (the "Commissioner") has the authority and discretion to issue furloughs under N.J.S.A. 30:4-91.3 for inmates, but the Commissioner may not grant furloughs for inmates 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 subsection b. of N.J.S.A. 2C:12-1; and

WHEREAS, pursuant to the terms of N.J.S.A. 30:4-91.3, such furloughs extend the limits of the place of confinement for inmates as to whom there is reasonable cause to believe they will honor the trust placed in them and return to the place of confinement at the conclusion of the furlough period, and can include restricting an inmate to home confinement; and

WHEREAS, the Commissioner may exercise his authority under N.J.S.A. 30:4-91.3 for any compelling reason consistent with the public interest, which necessarily includes emergency medical home confinement designed to mitigate a high-risk inmate's chance of exposure to COVID-19; and

WHEREAS, it would only be appropriate to grant an inmate such emergency medical home confinement where such inmate does not present a threat to public safety, including to a victim, especially at a time when law enforcement agencies across the State are dedicating time and resources to addressing the Public Health Emergency; and

WHEREAS, it would only be appropriate to grant an inmate such emergency medical home confinement where doing so will indeed improve the prospects for that inmate's health and safety, which means that such home confinement is only appropriate for an inmate if there is an established plan in place to ensure the inmate has access to a place of residence, and to social services and medical care as DOC deems necessary; and

WHEREAS, given the scope and scale of the numbers of inmates who may warrant emergency medical home confinement in light of the Public Health Emergency, it will promote the public health, safety, and welfare to constitute an Emergency Medical Review Committee (the "Committee") to more efficiently and thoroughly advise the Commissioner regarding which inmates should be temporarily placed in home confinement to protect their health consistent with public safety, and to allow that the Committee to call on DOC employees and

any other Executive Branch departments and agencies to provide assistance in fulfilling that important mission; and

WHEREAS, for these reasons, among others, the strict enforcement of certain statutory provisions that would inhibit the ability of DOC and the State Parole Board to expeditiously review such parole applications and to expeditiously temporarily place inmates in home confinement to protect their health consistent with public safety is detrimental to the public welfare; and

WHEREAS, even where an individual does not warrant parole or emergency medical home confinement, DOC has available tools to reduce the threat to inmates posted by COVID-19; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4 and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers, which I have invoked;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. DOC shall expeditiously identify inmates for referral to the State Parole Board and the Committee described in Paragraph 5 of this Order as follows:

   a. DOC shall generate a list of inmates who are both 60 years or older and possess underlying medical conditions that increase the risk of death or serious injury from COVID-19 (the "First Emergency Medical Referral List");

   b. DOC shall generate a list of remaining inmates who are either 60 years or older or possess underlying medical conditions that increase the risk of death or

serious injury from COVID-19 (the "Second Emergency Medical Referral List");

c. DOC shall generate a list of inmates who were denied parole in the past year and who do not already appear on the First or Second Emergency Medical Referral List (the "Third Emergency Medical Referral List");

d. DOC shall generate a list of inmates who are serving a prison sentence with either a maximum release date within 90 days of the date the list is generated, or a parole eligibility date within 90 days of the date the list is generated, and who do not already appear on the First, Second, or Third Emergency Medical Referral List (the "Fourth Emergency Medical Referral List"); and

e. After the Fourth Emergency Medical Referral List is generated, and on a periodic basis of at least once a week, DOC shall submit Supplemental Emergency Medical Referral Lists that include any additional inmates that DOC subsequently concludes face a heightened risk of death or serious injury from COVID-19 based on their age and/or underlying medical conditions.

2. In preparing the lists described in Paragraph 1 of this Order (the "Emergency Medical Referral Lists"), DOC shall:

a. Consult with the Department of Health to determine which underlying medical conditions heighten the risk of death or serious injury associated with COVID-19;

b. Only include inmates on the Emergency Medical Referral Lists who are not prohibited by N.J.S.A. 30:4-91.3b from participating in a furlough program administered by DOC and who are not currently serving

a sentence for an offense subject to the provisions of the No Early Release Act, N.J.S.A. 2C:43-7.2; and

c. Indicate, for each inmate on an Emergency Medical Referral List, the prosecuting agency and whether the inmate is currently eligible for parole.

3. Upon completion of each Emergency Medical Referral List, DOC shall immediately produce the list to the Director of the Division of Criminal Justice and to the County Prosecutors, who shall within five days take the following actions with regards to any inmates prosecuted by their agency:

a. Notify the victim or next of kin about the possibility of the inmate's parole or emergency medical home confinement; and

b. Submit to the Parole Board and the Committee described in Paragraph 5 of this Order the views of the prosecuting agency and, if applicable, the victim or next of kin, regarding the possibility of the inmate's parole or emergency medical home confinement.

4. Upon completion of each Emergency Medical Referral List, DOC shall immediately produce to the State Parole Board the names of any parole-eligible inmates who appear on the list and promptly notify those inmates of such action. Upon receipt of the names, the State Parole Board shall expedite consideration of those inmates for parole. The State Parole Board may conduct hearings telephonically or by videoconference for any individuals on any Emergency Medical Referral List, for the purpose of expediting review and avoiding person-to-person contact. The State Parole Board shall prioritize consideration of parole-eligible inmates who appear on the First Emergency Medical Referral List; followed by inmates who appear on the Second Emergency Medical Referral List; followed by inmates who appear on the Third Emergency Medical Referral List; followed by inmates who appear on the Fourth Emergency Medical Referral List and any Supplemental

Emergency Medical Referral List; and it shall consider inmates for parole regardless of whether the State Parole Board previously denied parole or issued a Future Eligibility Term. To the degree that they are inconsistent with this Order, the provisions of N.J.S.A. 30:4-123.48g; N.J.S.A. 30:4-123.53a(d); N.J.A.C. 10A:71-3.14e-f; N.J.A.C. 10A:71-3.7a-d, f; and N.J.A.C. 10A:71-3.9c are suspended for the duration of this Public Health Emergency. Any provisions of these statutes and regulations that are not inconsistent with this Order remain in full force and effect.

5. There is hereby established an Emergency Medical Review Committee, which shall be jointly chaired by a designee of the DOC Commissioner and a designee of the Chairman of the State Parole Board. All members shall serve at the pleasure of the appointing department and without compensation. Upon completion of each Emergency Medical Referral List, DOC shall immediately produce the list to the Committee. Within seven days of receiving any Emergency Medical Referral List, the Committee shall prepare a recommendation regarding each inmate on the list as to whether the Commissioner should authorize a period of emergency medical temporary home confinement pursuant to N.J.S.A. 30:4-91.3, which shall include:

a. Describing the views of the prosecuting agency and, if applicable, the victim or next of kin;

b. Identifying a community sponsor for the inmate;

c. Developing a proposed supervision plan, including, where appropriate, the use of telephonic check-ins and electronic monitoring devices;

d. Proposing any conditions on the inmate’s temporary home confinement, including the scope of the inmate’s restrictions on travel outside the home;

e. Verifying the availability of appropriate medical and social services sufficient to address the heightened risk of death or serious injury if exposed to COVID-19;

f. Verifying the availability of appropriate housing, which may include, but need not be limited to, a hospital or other housing accommodation suitable to the inmate's medical condition, which shall be located in the State of New Jersey;

g. Verifying that DOC has produced or will produce photo identification for the inmate prior to the inmate's transfer to temporary home confinement; and

h. Verifying that the conditions under which the inmate would be placed in temporary home confinement would present a lower risk of contracting COVID-19 than the inmate would face if housed in a DOC facility.

6. When preparing recommendations, the Committee is authorized to call upon any department, office, division or agency of this State to supply it with data and any other information or assistance available to such agency as the Committee deems necessary to execute its duties under this Order. Each department, office, division or agency of this State is hereby required, to the extent not inconsistent with law, to cooperate fully with the Committee within the limits of its statutory authority and to furnish it with such assistance on as timely a basis as is necessary to accomplish the purpose of this Order.

7. When preparing recommendations, the Committee is authorized to call upon, and should consult with, medical experts, the Department of Human Services, county social service organizations, and non-profit organizations to identify resources that would ensure the health and safety of inmates serving in emergency medical home confinement.

8. Within three days of receiving a recommendation from the Committee, the Commissioner shall decide whether to grant an emergency medical home confinement pursuant to his authority under N.J.S.A. 30:4-91.3. The Commissioner shall not authorize temporary home confinement for an inmate unless the Commissioner is satisfied that the proposed conditions of confinement appropriately safeguard the health and safety of the inmate, the general public, and any victims of the inmate's offense.

9. Prior to releasing an inmate on parole or transferring an inmate to temporary home confinement, DOC shall:

a. Issue the inmate a temporary photo identification card, which shall include at a minimum the inmate's name, date of birth, and State Bureau of Identification (SBI) number;

b. Assist an eligible inmate in completing and submitting applications to the relevant county board of social service for benefits through the Supplemental Nutrition Assistance Program and WorkFirst NJ program; and

c. Assist an eligible inmate in completing and submitting an application for Medicaid to the Department of Human Services, and provide the inmate with a copy of the completed application.

10. For all inmates who do not receive parole or an emergency medical home confinement, DOC shall take all appropriate actions to mitigate inmates' health risks while remaining in DOC's custody.

11. For purposes of this Order, "Executive Branch departments and agencies" shall mean any of the principal departments in the Executive Branch of State government and any agency, authority, board, bureau, commission, division, institution, office, or other instrumentality within or created by any such department, and any independent State authority, commission, instrumentality, or agency

over which the Governor exercises executive authority, as determined by the Attorney General.

12. This Order shall take effect immediately and shall remain in effect until revoked or modified by the Governor, who shall consult with the Commissioner of DOH as appropriate.

GIVEN, under my hand and seal this 10th day of April, Two Thousand and Twenty, and of the Independence of the United States, the Two Hundred and Forty-Fourth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor