

"Parolee" shall mean any inmate who is subject to the parole jurisdiction of the Board and who has been released on parole. "Parolee" shall also include a juvenile offender under supervision during a term of post-incarceration.

"Parole officer" shall mean, with respect to an adult inmate, an officer assigned by the Bureau of Parole and, with respect to a juvenile inmate, a person assigned by the Commission.

"State correctional facilities" shall mean all facilities of the New Jersey Department of Corrections as well as all places where those sentenced or committed to the custody of the Department of Corrections may, from time to time, be housed.

"Young adult inmate" shall mean any inmate sentenced to an indeterminate term at the Youth Correctional Complex or the Edna Mahan Correctional Facility for Women.

Amended by R.1985 d.213, effective May 6, 1985.
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Amended "County correctional facilities", "District Parole Supervisor", "Juvenile inmate", "Parolee"; added "County inmate" and "County Penitentiary/Workhouse".

Administrative correction, effective January 27, 1989.

See: 21 N.J.R. 558(a).

Institutional name change.

Amended by R.1997 d.168, effective April 7, 1997.

See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

Added "Commission", "Juvenile facilities", and "Parole officer"; and amended "Parolee".

10A:71-1.2 Board meetings

(a) Formal Board meetings shall be any meetings where Board policy, rules and regulations are determined.

1. Except as provided herein, the Chairperson shall give at least one week's notice of a formal Board meeting to members of the Board, the Governor, the Commissioner and the Commission.

2. Formal Board meetings shall be open only to the Governor and the Governor's representatives, the Commissioner and the Commissioner's representatives, the Commission's representatives, representatives of recognized victim groups and to such other persons as authorized by the Board.

(b) Regular Board meetings shall be any meetings where executive clemency cases are reviewed and where individual cases are decided upon appeal or referral from a Board panel.

1. Except as provided in this chapter, the Chairperson shall give at least 72 hours notice of a regular Board meeting to the members of the Board.

2. Regular Board meetings shall be open only to such persons as authorized by the Board.

(c) The Board shall hold a public meeting at least annually for the purpose of soliciting input from members of the public and the criminal justice system on the operations, policies, and procedures of the Board.

(d) Except as provided herein, the Chairperson, after consulting with the Board, shall establish the schedule of formal and regular Board meetings.

(e) When at least five Board members determine that an emergency exists which requires Board action, the Chairperson shall schedule a Board meeting notwithstanding lack of compliance with the notice provisions provided herein, and shall immediately give notice in accordance with (a)1 or (b)1 above.

(f) The Chairperson, after consulting with the Board, shall establish the agenda for all formal and regular Board meetings; provided, however, that at each meeting any Board member may raise new business. Such agenda shall be provided to Board members and other appropriate parties reasonably prior to the Board meeting.

(g) Formal and regular Board meetings shall be held in the Board's central offices in Trenton unless otherwise directed by the Chairperson, after consulting with the Board.

(h) Except as provided in N.J.A.C. 10A:71-1.4, five Board members shall constitute a quorum of the Board.

(i) All policies and determinations of the Board shall be made by a majority vote of the Board members, subject to the provisions of N.J.A.C. 10A:71-1.4 and 1.5.

(j) No Board member shall participate in any vote without being present for the deliberation on the subject matter. If no majority decision is reached, no Board action shall result.

1. If such a circumstance occurs on an individual case, any previous decision by a Board panel shall stand, or if no decision by a Board panel has been made, then any previous decision by a Board member or hearing officer shall stand.

2. If such a circumstance occurs on an individual parole release or parole revocation case, and no previous decision was made by the Board panel, Board member or hearing officer, the case shall be resolved in the manner most favorable to the inmate or parolee.

Amended by R.1985 d.213, effective May 6, 1985.
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

(j) Substantially amended.

Amended by R.1990 d.141, effective March 5, 1990.
See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

At (h), changed from four to five Board members.

Amended by R.1995 d.109, effective February 21, 1995.

See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).

Amended by R.1997 d.168, effective April 7, 1997.

See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (a)1, inserted reference to Commission; in (a)2, inserted reference to Commission's representatives.

10A:71-1.3 Parole case reviews, release hearings, board panel and board hearings

(a) The Chairperson shall establish the schedule of all parole case reviews, release hearings, Board panel and Board hearings.

(b) The Chairperson shall give reasonable notice of such case reviews and hearings to the Board panel members.

(c) In addition to appropriate Board personnel and correction officers, if security considerations so warrant, parole release hearings, Board panel and Board hearings shall be open only to such persons as authorized by the Board panel or Board with the consent of any inmate who may be present for a hearing on his or her case. The inmate's consent shall be in writing and made a part of the Board's record on the inmate.

(d) Except as provided in N.J.A.C. 10A:71-1.4, one member of the Board panel shall constitute a quorum of the panel.

(e) All parole determinations on individual cases shall be made by a majority vote of the appropriate Board panel members or, in the case of Board hearings, by a majority vote of the Board members, subject to the provisions of N.J.A.C. 10A:71-1.4 and 1.5.

(f) When a Board panel hearing is conducted by two members, the inmate's case shall be referred to the third Board panel member if upon conclusion of the hearing a unanimous decision on the case cannot be reached.

1. In such instances, the third Board panel member shall review all records of the hearing prior to the Board panel rendering a final decision on the case.

2. In such instances, if the third Board panel member is disqualified pursuant to N.J.A.C. 10A:71-1.5(a), or (b), the case shall be considered by a Board member(s) designated pursuant to N.J.A.C. 10A:71-1.5(e) or (f).

Amended by R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Section substantially amended.

Amended by R.1990 d.141, effective March 5, 1990.

See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

Requirement of full Board hearing in the case of any offender serving a custodial term for the offense of murder.

Amended by R.1990 d.257, effective May 21, 1990.

See: 22 N.J.R. 899(a), 22 N.J.R. 1609(a).

In (c): added phrase "and correction . . . warrant."

Amended by R.1995 d.109, effective February 21, 1995.

See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).

10A:71-1.4 Board membership

(a) The Board shall consist of a Chairperson, 10 associate members and one alternate Board member. Members of the Board and the alternate Board member shall be appointed by the Governor with the advice and consent of the Senate from qualified persons with training or experience in law, sociology, criminal justice, juvenile justice or related branches of the social sciences. Members of the Board and the alternate Board member shall be appointed for terms of six years and the term of their successor shall be calculated from the expiration of the incumbent's term. Members shall serve until their successors are appointed and have qualified.

(b) The Governor shall designate a vice-chairperson from among the associate members. The vice-chairperson shall assume the duties of the chairperson when the chairperson is absent or otherwise incapable of performing his or her duties or, in the case of removal or a permanent incapacity, until the qualification of a successor chairperson appointed by the Governor.

(c) The alternate Board member may assume the duties of an associate member when the associate member is absent or otherwise unable to perform his or her duties or assumes the duties of the Chairperson, and shall perform those duties only until the associate assumes his or her duties or, in the case of removal or a permanent incapacity, the qualification of a successor appointed by the Governor.

(d) Any vacancy occurring in the membership of the Board, otherwise than by expiration of term, shall be filled in the same manner as one occurring by expiration of term, but for the unexpired term only. In the event that any member of the Board shall be rendered incapable of performing his or her duties and the alternate Board member is incapable of performing that associate's duties, either because the alternate Board member has assumed the duties of another associate or is otherwise rendered incapable of performing the associate's duties, the Governor shall appoint a qualified person to act in the associate member's stead during the period of the associate member's incapacity. Any member of the Board, including the alternate Board member, may be removed from office by the Governor for cause.

(e) At the time of appointment, the Governor shall designate two associate members of the Board to serve on a panel on juvenile commitments. The remaining eight associate members of the Board shall be appointed by the Governor to panels on adult sentences. The Chairperson of the Board shall assign six of the associate members so appointed to three panels on prison sentences, and the remaining two associate members so appointed to a panel on young adult sentences. The Chairperson of the Board shall be a member of each panel. Nothing provided herein shall prohibit the Chairperson from reassigning any member appointed to a panel on adult sentences to facilitate the efficient function of the Board. Further, nothing provided herein shall prohibit the Chairperson from temporarily reassigning any member appointed to a panel on juvenile commitments to a panel on adult sentences either as a member of a panel on prison sentences or a panel on young adult sentences to facilitate the efficient function of the Board. The alternate Board member may assume, in accordance with the provisions of this section, the duties of any associate member, regardless of whether that associate member serves on a panel on juvenile commitments or panels on adult sentences either as a member of a panel on prison sentences or a panel on young adult sentences.

10A:71-2.2 Records retention

(a) Electronic recordings of parole hearings and revocation hearings shall be retained by the Board for at least one year from the date a decision is rendered in an inmate's case provided, however, that if an appeal is filed within one year from the date of the decision being appealed, such recordings shall be retained until final determination of the appeal.

(b) Executive clemency records shall be permanently retained by the Board.

(c) Other written records shall be retained for at least one year and thereafter in accordance with Board policy.

Amended by R.1986 d.306, effective August 4, 1986.
See: 18 N.J.R. 929(a), 18 N.J.R. 1610(a).

Deleted "after the hearing" and substituted "from the date of the decision being appealed."

10A:71-2.3 Subpoenas

Any hearing officer or Board member may issue a subpoena to compel the appearance of witnesses and the production of documentary evidence relevant to any proceedings before such hearing officer or Board member.

Amended by R.1985 d.213, effective May 6, 1985.
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).
Corrected subpoena.

10A:71-2.4 Institutional infractions

(a) The Board panel or Board shall consider the final decision of the Department's or Commission's officials responsible for adjudication of institutional infractions to be res judicata.

(b) No rescission hearing shall be held pursuant to N.J.A.C. 10A:71-5, nor shall any alteration of the parole eligibility date be made pursuant to N.J.A.C. 10A:71-3 on the basis of an institutional infraction which has resulted in

a finding of not guilty by the appropriate Department or Commission officials.

(c) When the basis for the rescission hearing or the alteration of the parole eligibility date is an institutional infraction, the Board panel or hearing officer reviewing the case shall consider aggravating and mitigating circumstances but shall not consider evidence relating to the inmate's guilt or innocence of the commission of the institutional infraction.

Amended by R.1985 d.213, effective May 6, 1985.
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Deleted text "relating to the infraction".

Amended by R.1997 d.168, effective April 7, 1997.
See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (a) and (b), inserted reference to Commission officials.

Case Notes

A Parole Board is not intended as an appeal tribunal to relitigate prior disciplinary hearings; in the absence of an appeal to a proper tribunal, the Board may consider such hearing determinations final; issue of rescission propriety and parole ineligibility date rescheduling becomes moot upon parole; Board could correct erroneous parole eligibility date at any time; such recalculation without notice to the inmate or a hearing was not violative of due process. New Jersey State Parole Bd. v. Gray, 200 N.J.Super. 343, 491 A.2d 742 (App.Div.1985).

10A:71-2.5 Institutional representatives

The Chairperson shall assign a parole counselor or other Board representative to each State correctional facility to assist inmates on all parole procedures, including any appearances before a hearing officer, Board panel or the Board.

SUBCHAPTER 3. PAROLE RELEASE HEARINGS

10A:71-3.1 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Actual eligibility date” shall mean the date that an adult inmate is actually eligible for consideration for parole. Such date shall be calculated, except as otherwise provided by statute, by the application of the following credits: commutation credits; credit for time served in a county jail prior to the date of sentence; earned work and earned minimum custody credits as of a specified date.

“Book eligibility date” shall mean the parole eligibility date established pursuant to N.J.S.A. 30:4-123.51 and N.J.S.A. 30:4-123.64. Such date shall be calculated by application of credit for time served in a county jail prior to the date of sentence, and except as otherwise provided for by statute, commutation credits.

“Flat eligibility date” shall mean the parole eligibility date established on an individual term pursuant to N.J.S.A. 30:4-123.51 and N.J.S.A. 30:4-123.64 prior to aggregation for the purposes of the calculation of a single parole eligibility date. Such date shall be calculated by the application of credit for time served in a county jail prior to the date of sentence.

“Maximum date” shall, except as otherwise provided by statute and herein, mean the court ordered maximum date less commutation credits, credit for time served in a county jail prior to the date of sentence, earned work and earned minimum custody credits as determined by the Department or the county correctional authority.

“Primary eligibility date” shall mean the parole eligibility date established pursuant to N.J.S.A. 30:4-123.51 and N.J.S.A. 30:4-123.64, based upon the sentence imposed by the court or the Board schedules contained in N.J.A.C. 10A:71-3.3, 7.17, 7.17A and 7.17B. Such date may be altered pursuant to N.J.A.C. 10A:71-3.4, 3.5 and 3.21.

“Projected eligibility date” shall mean that date calculated by the application, except as otherwise provided by statute, of the following credits: commutation credits; credit for time served in a county jail prior to the date of sentence; earned work and minimum custody credits as of a specific date and projected work and minimum custody credits based on a pattern of such credits established by the Department. Any change in the pattern shall be reported by the Department to the Board.

Amended by R.1985 d.213, effective May 6, 1985.
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Section substantially amended.

Amended by R.1990 d.141, effective March 5, 1990.
See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

Introductory language added.

Amended by R.1995 d.109, effective February 21, 1995.
See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).

Amended by R.1997 d.168, effective April 7, 1997.
See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

Amended “Primary eligibility date”.
Amended by R.1999 d.252, effective August 2, 1999.
See: 31 N.J.R. 1140(a), 31 N.J.R. 2218(a).

In “Primary eligibility date”, changed N.J.A.C. references.

Case Notes

Commutation time accrues faster on longer or aggregated terms than on shorter or nonaggregated terms. *State v. Richardson*, 208 N.J.Super. 399, 506 A.2d 43 (App.Div.1986), certification denied 523 A.2d 188, 105 N.J. 552.

10A:71-3.2 Calculation of parole eligibility terms

(a) This section shall not apply to adult inmates sentenced pursuant to N.J.S.A. 2A:113-4 for a term of life imprisonment, N.J.S.A. 2A:164-17 for a fixed minimum and maximum term or N.J.S.A. 2C:1-1(b). The aggregation provisions of N.J.S.A. 30:4-123.1, et seq. shall apply to such inmates.

(b) Except as provided in N.J.A.C. 10A:71-3.3(j), this section shall not apply to juvenile or young adult inmates.

(c) The parole eligibility terms for adult inmates shall be determined by the following:

1. Where a life term, with no mandatory-minimum term, has been imposed, the parole eligibility term shall, except as provided in (c)3 below, be 25 years.

2. Where a specific term, with no mandatory-minimum term, has been imposed, the parole eligibility term shall, except as provided in (c)3 below, be one-third of the specific term or 25 years, whichever is less.

3. Where a life term or a specific term with a judicial or statutory mandatory minimum term has been imposed, the parole eligibility term shall be the mandatory minimum term, provided that such minimum term is greater than otherwise required by subsection (c)1 or (c)2 above.

4. Where the inmate is serving a term and a concurrent or consecutive specific term, with no mandatory-minimum term, is subsequently imposed on or after June 21, 1994, the parole eligibility term on the subsequently imposed specific term shall be one-third of the balance of the specific term determined by reducing the specific term by credit awarded pursuant to N.J.S.A. 2C:44-5(b)(2).

5. Where the inmate is serving time due to a revocation of parole, the parole eligibility term shall be the future parole eligibility term set by the appropriate Board panel upon revocation of parole pursuant to N.J.A.C. 10A:71-7.17, 7.17A or 7.17B.

6. Where the inmate has been required to serve an additional term due to institutional infractions, the parole eligibility term shall include any additional term of incarceration required to be served.

7. Where a specific term to the Adult Diagnostic and Treatment Center has been imposed, the inmate shall be eligible for parole consideration only upon recommendation by the Special Classification Review Board pursuant to N.J.S.A. 2C:47-5 except that in no case shall an inmate committed to the Adult Diagnostic and Treatment Center become eligible for parole prior to the expiration of any mandatory minimum term imposed.

8. Where the inmate has been denied parole and required to serve a future eligibility term pursuant to N.J.A.C. 10A:71-3.21, a new book eligibility date shall be established by adding the additional term to the current book eligibility date and by including, in the case of an adult inmate, commutation credits based on the additional term only.

9. Where the inmate's actual eligibility date has passed at the time of the initial parole release hearing and the inmate has been denied parole and required to serve a future eligibility term pursuant to N.J.A.C. 10A:71-3.21, a new book date shall be established by adding the additional term to the actual eligibility date and by including, in the case of an adult inmate, commutation credit based on the additional term only.

10. If an inmate has been returned to confinement from the Intensive Supervision Program for any reason and if the inmate's parole eligibility date has passed at the time the inmate is returned to confinement, the following provisions shall apply in the case of an inmate denied parole release on or after May 21, 1990:

i. A new book eligibility date shall be established by adding the additional term established pursuant to N.J.A.C. 10A:71-3.21 to the date of the inmate's return to confinement.

ii. In the case of an adult inmate, the new book date shall include commutation credits based on the additional term only.

iii. In the case of an adult inmate, only work and minimum credits earned from the date of the inmate's return to confinement shall be applied in the calculation of the actual eligibility date. In the case of a young adult inmate, program participation credits determined pursuant to N.J.A.C. 10A:71-3.3 shall be applied to reduce the primary eligibility date established pursuant to this section.

(d) When a consecutive term is imposed, the parole eligibility term derived from the consecutive term, less county jail credits, shall be added to the parole eligibility term derived from the original term, less county jail credits, to determine the aggregate parole eligibility term. Applicable credits pursuant to (g)2 and (g)3 below shall be deducted from the aggregate parole eligibility term unless said term is determined pursuant to (c)3 above.

(e) When a concurrent term(s) is imposed, the parole eligibility term from the original term, less county jail credits, shall be added to the date the original term began to determine the flat eligibility date on the original term. The parole eligibility term on the concurrent term(s), less county jail credits, shall be added to the date the concurrent term(s) began to determine the flat eligibility date on the concurrent sentence. The aggregate parole eligibility term shall be that period of time between:

1. The earlier of the two dates on which the terms began; and

2. The later of the two flat parole eligibility dates. Applicable credits pursuant to (g)2 and (g)3 below shall be deducted from the aggregate parole eligibility term unless said term is determined pursuant to (c)3 above.

(f) Where a specific term to the Adult Diagnostic and Treatment Center has been imposed and the inmate is eligible for parole consideration pursuant to (c)7 above, the parole eligibility term, for the purposes of aggregation with any specific or life term, shall be set by the adult Board panel upon its acceptance of the recommendation by the Special Classification Review Board submitted pursuant to N.J.S.A. 2C:47-5(a).

(g) Credits shall reduce parole eligibility terms as follows:

1. County jail credits pursuant to R.3:21-8 shall reduce any parole eligibility terms determined pursuant to (c) above.

2. Commutation credits applied pursuant to N.J.S.A. 30:4-140 and credits for diligent application to work and other assignments earned pursuant to N.J.S.A. 30:4-92 shall reduce any aggregate parole eligibility terms except those determined pursuant to (c)3 above.

3. When an aggregate parole eligibility term includes a parole eligibility term determined pursuant to (c)3, such aggregate term shall be reduced by credits pursuant to (g)2 provided, however, that such credits accrued shall only be awarded subsequent to the expiration of the eligibility term determined pursuant to (c)3 above as calculated from the date such parole eligibility term began.

4. Upon the expiration of a parole eligibility term determined pursuant to (c)3 above, commutation credits and credits for diligent application to work and other assignments accrued during the service of the parole eligibility term determined pursuant to (c)3 above shall not reduce an adjusted parole eligibility date established pursuant to N.J.A.C. 10A:71-3.4 or a future parole eligibility date established pursuant to N.J.A.C. 10A:71-3.21, 3.47, 7.17, 7.17A or 7.17B.

(h) Parole eligibility terms shall be restricted as follows:

1. No inmate committed for a specific term(s) of years at the State Prison or the Edna Mahan Correctional Facility for Women shall become primarily eligible for parole until service of a full nine months of the aggregate term less any county jail credits, provided, however, that when the specific terms of years to the State Prison or the Correctional Institution for Women is less than 12 months this restriction shall not apply.

2. No aggregate parole eligibility term resulting from the aggregation of specific terms, which do not include a mandatory-minimum term(s), shall exceed 25 years.

3. No parole eligibility term resulting from a non-criminal violation(s) of parole conditions shall, after deductions for credits pursuant to (g)2 above, exceed 12 months.

(i) In the case of an adult inmate who is serving a sentence for an offense committed on or after August 19, 1997 and who has been denied parole and required to serve a future eligibility term pursuant to N.J.A.C. 10A:71-3.21, the new parole eligibility date shall not include reductions for commutation credits pursuant to N.J.S.A. 30:4-140 and credits for diligent application to work and other assignments earned pursuant to N.J.S.A. 30:4-92.

(j) Pursuant to N.J.S.A. 30:4-123.51(k), an inmate sentenced to imprisonment pursuant to paragraph (2) or (3) of subsection (b) of N.J.S.A. 2C:11-3 (murder) shall not be eligible for parole.

(k) Pursuant to N.J.S.A. 2C:47-5(f), an inmate sentenced to life imprisonment at the Adult Diagnostic and Treatment Center for a crime whose circumstances conform to those enumerated in paragraph (3) of subsection (b) of N.J.S.A. 2C:11-3 (murder) shall not be eligible for parole.

(l) Pursuant to N.J.S.A. 30:4-123.51c, the appropriate Board panel may release an inmate serving a sentence of imprisonment on medical parole, N.J.A.C. 10A:71-3.53, at any time.

(m) Pursuant to N.J.S.A. 30:4-123.51(e)1, an inmate sentenced for an offense specified in N.J.S.A. 2C:47-1 which was committed on or after December 1, 1998 shall become primarily eligible for parole as follows:

1. If the court finds that the inmate's conduct was not characterized by a pattern of repetitive, compulsive behavior or finds that the inmate is not amenable to sex offender treatment, or if after sentencing the Department of Corrections in its most recent examination determines that the inmate is not amenable to sex offender treatment, the inmate shall become primarily eligible for parole after having served any judicial or statutory mandatory minimum term or one-third of the sentence imposed where no mandatory minimum term has been imposed. Neither such terms shall be reduced by commutation time for good behavior pursuant to N.J.S.A. 30:4-140 or credits for diligent application to work and other institutional assignments pursuant to N.J.S.A. 30:4-92.

Amended by R.1985 d.213, effective May 6, 1985.
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Section substantially amended.

Amended by R.1988 d.336, effective July 18, 1988.
See: 19 N.J.R. 1396(b), 20 N.J.R. 1716(b).

Added (g)4.

Administrative correction, effective January 27, 1989.
See: 21 N.J.R. 558(a).

Institutional name change.

Amended by R.1990 d.141, effective March 5, 1990.
See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

Internal N.J.A.C. cites amended.

Amended by R.1990 d.257, effective May 21, 1990.

See: 22 N.J.R. 899(a), 22 N.J.R. 1609(a).

In (c)7: deleted text with requirement that future parole eligibility terms imposed upon the denial of parole commence upon the date of the initial parole release hearing in specified cases. Added (c)8.

Amended by R.1993 d.399, effective August 16, 1993.

See: 25 N.J.R. 1665(a), 25 N.J.R. 3826(a).

Amended by R.1995 d.109, effective February 21, 1995.

See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).

Amended by R.1997 d.168, effective April 7, 1997.

See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (c)5 and (g)4, inserted additional N.J.A.C. reference.

Amended by R.1998 d.144, effective March 16, 1998.

See: 29 N.J.R. 4243(a), 30 N.J.R. 1044(a).

In (g)4, substituted a reference to N.J.A.C. 10A:71-3.47 for a reference to N.J.A.C. 10A:71-3.46.

Amended by R.1998 d.391, effective August 3, 1998.

See: 30 N.J.R. 1176(a), 30 N.J.R. 2920(a).

Added (i) through (l).

Amended by R.1999 d.189, effective June 7, 1999.

See: 31 N.J.R. 710(a), 31 N.J.R. 1490(a).

In (b), changed N.J.A.C. reference; in (c)7, deleted a former i; rewrote (f); and added (m).

Amended by R.1999 d.252, effective August 2, 1999.

See: 31 N.J.R. 1140(a), 31 N.J.R. 2218(a).

In (c)5 and (g)4, changed N.J.A.C. references.

Law Review and Journal Commentaries

Gap-time Credits. Steven P. Bann, 137 N.J.L.J. No. 9, 54 (1994).

Case Notes

Defendant who pleaded guilty to manslaughter after his murder conviction was reversed on appeal, and whose murder sentence had been ordered to run consecutively to sentence for prior offense, was entitled to credit for parole ineligibility period for span of time from expiration of period of parole ineligibility on sentence for prior offense through date his murder conviction was reversed; denying defendant credit would have penalized him for exercising his constitutional right of appeal. *Curry v. New Jersey*, 706 A.2d 769, 309 N.J.Super. 66 (A.D. 1998).

Defendant was not entitled to credit against sentence imposed on new charges for time spent in presentence custody after parole warrant was lodged; after parole warrant was lodged. *State v. Harvey*, 273 N.J.Super. 572, 642 A.2d 1052 (A.D.1994).

One-third gap-time credit toward parole eligibility. *Booker v. New Jersey State Parole Bd.*, 136 N.J. 257, 642 A.2d 984 (1994).

Parole Board required to reduce aggregate sentence by gap-time credit prior to computing primary eligibility date where there is no parole disqualifier in sentence. *Booker v. New Jersey State Parole Bd.*, 265 N.J.Super. 191, 625 A.2d 1153 (A.D.1993), certification granted 134 N.J. 486, 634 A.2d 532, certification granted 134 N.J. 487, 634 A.2d 532, affirmed 136 N.J. 257, 642 A.2d 984.

Gap-time credit inapplicable where initial sentence had term of parole ineligibility. *Booker v. New Jersey State Parole Bd.*, 265 N.J.Super. 191, 625 A.2d 1153 (A.D.1993), certification granted 134 N.J. 486, 634 A.2d 532, certification granted 134 N.J. 487, 634 A.2d 532, affirmed 136 N.J. 257, 642 A.2d 984.

Gap-time credit only reduces aggregate term after inmate serves period of parole ineligibility. *Booker v. New Jersey State Parole Bd.*, 265 N.J.Super. 191, 625 A.2d 1153 (A.D.1993), certification granted 134 N.J. 486, 634 A.2d 532, certification granted 134 N.J. 487, 634 A.2d 532, affirmed 136 N.J. 257, 642 A.2d 984.

Imposition of indeterminate sentence upon young adult offender following parole violation was supported by evidence. *State v. Berger*, 258 N.J.Super. 553, 610 A.2d 892 (A.D.1992).

Imposition of indeterminate sentence upon young adult offender following violation of probation was permissible. *State v. Berger*, 258 N.J.Super. 553, 610 A.2d 892 (A.D.1992).

Regulation providing for calculating commutation credits for parole eligibility was valid. *Alevras v. Delanoy*, 245 N.J.Super. 32, 583 A.2d 778 (A.D.1990), certification denied 126 N.J. 330, 598 A.2d 888.

Commitment at treatment facility for sex offenders was warranted. *State v. Hass*, 237 N.J.Super. 79, 566 A.2d 1181 (L.1988).

Gap-time credit applied only to base term of aggregated sentences. *Richardson v. Nickolopoulos*, 110 N.J. 241, 540 A.2d 1246 (1988).

Trial court must inform sex offenders of the possibility and parole consequences of a sentence to the Adult Diagnostic and Treatment Center before accepting a guilty plea pursuant to a plea agreement. *State v. Howard*, 110 N.J. 113, 539 A.2d 1203 (1988).

Actions of trial court in sentencing defendant to adult diagnostic and treatment center implicated due process liberty interests which arose from expectation that parole standards for center and rehabilitative procedures would not be applied absent finding of repetitive and compulsive behavior as required by statute, but which did not depend on finding that sentence at center carried more severe parole consequences than ordinary prison sentence. *State v. Howard*, 110 N.J. 113, 539 A.2d 1203 (1988).

Sentencing judge did not err in determining that presumption against imprisonment of first offender was overcome because defendant was a volunteer fireman; custodial sentence imposed should have been one of several meaningful conditions of probation. *State v. Gardner*, 215 N.J.Super. 84, 521 A.2d 357 (App.Div.1987), remanded 113 N.J. 510, 551 A.2d 981.

Rules control aggregation of sentences for purposes of parole. *State v. Richardson*, 208 N.J.Super. 399, 506 A.2d 43 (App.Div.1986), certification denied 523 A.2d 188, 105 N.J. 552.

Defendant's resentencing, at his own option, from a 17-year term under the then new Code of Criminal Justice to a 30-year term under the prior statutory scheme was not an enhancement of punishment in violation of double jeopardy principles. *State v. McMeekin*, 204 N.J.Super. 496, 499 A.2d 515 (App.Div.1985), certification denied 508 A.2d 188, 102 N.J. 302.

Parole eligibility date reduction methods examined; due process violated for imposition of a sentence five times greater than original sentence, absent justification, after successful challenge to illegal original sentence. *State v. Heisler*, 192 N.J.Super. 586, 471 A.2d 805 (App.Div.1984).

Commutation time accrues faster on longer or aggregated terms than on shorter or nonaggregated terms. *State v. Richardson*, 208 N.J.Super. 399, 506 A.2d 43 (App.Div.1986), certification denied 523 A.2d 188, 105 N.J. 552.

Aggregation of three consecutive indeterminate sentences for setting of maximum parole release date proper; rule regarding serving of consecutive indeterminate sentences valid; rule did not apply where consecutive indeterminate sentences imposed as part of one judgment of conviction and sentencing (citing former N.J.A.C. 10:35-57.4 and 57.7). *State v. Lucas*, 164 N.J.Super. 57, 395 A.2d 564 (Law Div.1978).

10A:71-3.3 Parole eligibility for young adult inmates

(a) Except as provided herein, an inmate sentenced to an indeterminate term of years as a young adult inmate shall be primarily eligible for parole consideration on a date established by a hearing officer or the young adult Board panel pursuant to the following schedule of presumptive primary eligibility dates:

PRESUMPTIVE PRIMARY ELIGIBILITY DATES (MONTHS) LENGTH OF INDETERMINATE TERM

Crime Category	(Years)						
	0-4	5-9	10-14	15-19	20-24	25-29	30-Life
Category A		40	56	74	90	106	120
Category B	16	32	40	48	56	56	56
Category C	16	28	36	44	52		
Category D	14	20	28	36	44		
Category E	12	14	18	22	22		
Category F	10	10					
Category G	8						

Category A: Murder.

Category B: Aggravated manslaughter, kidnapping first degree, aggravated sexual assault, or any other first degree crime.

Category C: Robbery first degree.

Category D: Manslaughter, robbery second degree, aggravated assault second degree, sexual assault, or any other second degree crime.

Category E: Manufacturing, distributing or dispensing a controlled dangerous substance second degree or possession with intent to manufacture, distribute or dispense a controlled dangerous substance second degree.

Category F: Burglary third degree, possession of a weapon for an unlawful purpose third degree, unlawful possession of a weapon third degree, terroristic threats, aggravated assault third degree, death by auto, endangering the welfare of a child third degree, any other third degree crime or possession of controlled dangerous substance.

Category G: Criminal sexual contact, forgery fourth degree, unlawful possession of a weapon fourth degree, certain persons not to have weapons, criminal trespass, or any other fourth degree crime.

(b) The presumptive primary eligibility date established pursuant to (a) above may be reduced by up to ten months if the young adult Board panel or the hearing officer establishing the date determines that one or more mitigating factors such as, but not limited to, the following are present:

1. The inmate has no prior adult convictions.
2. The inmate has previously adjusted successfully to parole or probation.
3. The inmate acted under strong provocation.
4. The inmate did not contemplate that his or her conduct would cause or threaten serious injury.
5. The inmate has no prior incarcerations.

(c) The presumptive primary eligibility date established pursuant to (a) above may be increased by up to 10 months if the young adult Board panel or the hearing officer establishing the date determines that one or more of the following aggravating factors are present:

1. The inmate has an extensive prior record.
2. The inmate's prior record consists of particularly serious crimes.
3. The inmate has previously adjusted unsuccessfully to parole or probation supervision or the present term involves unsuccessful adjustment to probation supervision.
4. The current offense was premeditated.
5. The inmate used a weapon during the current offense.
6. The current offense involved an injury to the victim.
7. The inmate has received additional concurrent or consecutive sentences.

See: 30 N.J.R. 1176(a), 30 N.J.R. 2920(a).
In (b), added 23.
Administrative correction.
See: 31 N.J.R. 1816(a).

N.J.A.C. 10A:71-2.11). In re Hawley, 98 N.J. 108, 484 A.2d 684 (1984), affirmed 101 N.J. 36, 486 A.2d 339.

Rule adopted to implement statutory standard that parole must be granted unless it is shown by a preponderance of the evidence there is a substantial likelihood that the inmate will commit a crime. In re Trantino Parole Application, 89 N.J. 347, 446 A.2d 104 (1982).

Case Notes

Parole board may consider only sentencing court's insights as background report or recommended factors. State v. Beauchamp, 262 N.J.Super. 532, 621 A.2d 516 (A.D.1993).

The prosecutor has the right to appeal any Parole Board decision granting parole to a state prison inmate: Board is not required to provide the prosecutor with a statement of reasons for release decision, but should do so in the public interest in those cases in which the prosecutor has participated in the parole eligibility hearing (cited as

10A:71-3.12 In absentia hearings; adult inmates

(a) If an inmate is physically unable to appear at a parole hearing or if an inmate refuses to appear at a parole hearing, the hearing officer or Board panel shall consider the case on the record in the inmate's absence.

(b) If a mental competency examination has certified that the inmate is unable to understand the nature of the parole proceedings, the Board or an interested party may begin proceedings before the relevant court for appointment of a guardian ad litem for the inmate, who may appear before the Board on behalf of the inmate.

10A:71-3.13 Parole hearing procedures; adult inmates

(a) The parole hearing shall be informal.

(b) Parole hearings on a scheduled hearing date shall commence at 9:00 A.M. unless otherwise agreed to by the Board panel members.

(c) The hearing officer, Board panel or Board shall receive as evidence any relevant and reliable documents or testimony.

(d) All such evidence not classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or the rules and regulations of the Department shall be disclosed to the inmate.

(e) The inmate shall have the right to rebut any evidence and shall have the right to present evidence on his or her own behalf.

(f) The inmate shall have the right to be aided by an interpreter, if such aid is determined to be necessary by the hearing officer, Board panel or Board.

(g) The inmate shall have the right to be aided by a Board representative pursuant to N.J.A.C. 10A:71-2.5.

(h) The inmate shall disclose any information concerning any history of civil commitment.

(i) The inmate shall have the right to request, in writing, a postponement of the hearing at any time, and the hearing officer or Board panel may grant such request. However, such postponement shall not be deemed a waiver of the time limits contained in this subchapter unless authorized pursuant to N.J.A.C. 10A:71-3.50.

(j) The decision of the hearing officer, Board panel or Board shall be based solely on the evidence presented at the hearing.

(k) The hearing officer or presiding Board member shall record the hearing by an electronic recording device. If the electronic recording device is not operational the hearing shall proceed only upon the inmate waiving the electronic recording of the hearing. The waiver shall be in writing and signed by the inmate and shall be made a part of the inmate's records. If the inmate does not wish to proceed without the electronic recording of the hearing, the hearing shall be rescheduled for the next available hearing date.

(l) The Board shall adopt a professional code of conduct and parole hearings shall be conducted in accordance with the professional code of conduct.

Amended by R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

(g) substantially amended.

Amended by R.1990 d.141, effective March 5, 1990.

See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

Reference to full Board added throughout.

Amended by R.1995 d.109, effective February 21, 1995.

See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).

Amended by R.1998 d.391, effective August 3, 1998.

See: 30 N.J.R. 1176(a), 30 N.J.R. 2920(a).

Inserted a new (h); and recodified former (h) through (k) as (i) through (l).

Case Notes

Failure by parole board to consider written reports of mental health professionals constituted procedural error. *New Jersey State Parole Bd. v. Cestari*, 224 N.J.Super. 534, 540 A.2d 1334 (A.D.1988), certification denied 111 N.J. 649, 546 A.2d 558.

10A:71-3.14 Scheduling of case review and initial parole hearing; adult inmates

(a) Upon the Board panel's receipt of the reports required pursuant to N.J.A.C. 10A:71-3.7, the Chairperson shall establish a schedule of case reviews and parole hearings to be conducted by a hearing officer assigned by the Chairperson.

(b) Except as provided in N.J.A.C. 10A:71-3.51, such case reviews and hearings shall be conducted at least 60 days or as soon as practicable in advance of the inmate's actual parole eligibility date.

(c) The Chairperson, when practicable, shall notify the chief executive officer of the schedule of such case reviews and hearings at least seven days prior to the hearings.

(d) It shall be the responsibility of the chief executive officer to immediately notify the Chairperson if any inmate scheduled for a hearing is transferred from the institution or is not expected to be available for any reason.

(e) It shall be the responsibility of the chief executive officer to make arrangements to have any inmate scheduled for a parole hearing brought to the hearing, unless such inmate is physically unable to appear or refuses to appear for the hearing.

(f) It shall be the responsibility of the chief executive officer to notify the assigned hearing officer, in writing, of the reason for the failure of an inmate to appear at a scheduled parole hearing.

Amended by R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

(f) added.

Amended by R.1990 d.141, effective March 5, 1990.

See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

In (b) changed N.J.A.C. cite.

Amended by R.1995 d.109, effective February 21, 1995.

See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).
 Amended by R.1998 d.391, effective August 3, 1998.
 See: 30 N.J.R. 1176(a), 30 N.J.R. 2920(a).
 In (b), changed N.J.A.C. reference.

10A:71-3.15 Initial hearing and case review notice of decision; adult inmates

(a) At the conclusion of the parole hearing or case review, the hearing officer shall:

1. Recommend, except as provided in (b) below, to a member of the appropriate Board panel that the inmate be released on parole; or
2. Refer the case to the appropriate Board panel for a hearing; or
3. Defer decision for up to 45 days in order to obtain relevant information.

(b) In the case of an offender serving a term for the crime of murder, aggravated manslaughter, manslaughter, death by vehicular homicide, aggravated assault second degree, kidnapping, aggravated sexual assault, sexual assault, robbery, aggravated arson, burglary second degree, endangering the welfare of a child second degree or causing or risking widespread injury or damage second degree, the hearing officer shall refer the case for a hearing before the appropriate Board panel.

(c) At the time of the hearing or case review, the hearing officer shall issue a written assessment to the inmate, the Department and the Board panel.

(d) Such case assessment shall consist of the hearing officer's determination and the reasons therefor, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or the rules and regulations of the Department.

(e) If the hearing officer recommends that the inmate be released on parole, the hearing officer shall advise the inmate at the time of the hearing or upon resolution of any deferred decision of any special parole conditions recommended.

Amended by R.1994 d.510, effective October 17, 1994.
 See: 26 N.J.R. 2189(a), 26 N.J.R. 4190(a).
 Amended by R.1995 d.109, effective February 21, 1995.
 See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).
 Amended by R.1998 d.391, effective August 3, 1998.
 See: 30 N.J.R. 1176(a), 30 N.J.R. 2920(a).
 In (b), inserted a reference to death by vehicular homicide.

10A:71-3.16 Board member review; adult inmates

(a) When the hearing officer recommends that an inmate be released on parole, the Chairperson shall assign two members of the appropriate Board panel to review such recommendation.

(b) If the assigned Board members concur with the recommendation of the hearing officer, the members shall certify parole release as soon as practicable after the parole eligibility date by:

1. Establishing a parole release date based upon the inmate's projected parole eligibility date; or
2. Establishing a specific parole release date; and
3. Establishing appropriate pre-release conditions; and
4. Establishing appropriate special parole conditions pursuant to N.J.A.C. 10A:71-6; and
5. Issuing a written decision within 21 days of the Board members' action to the inmate, the Department, the Board and the Prosecutor for the county from which the inmate was committed.

(c) If a parole release date has been established based upon a projected parole eligibility date, the chief executive officer of the institution or designee shall:

1. Notify the senior Board representative at the institution immediately upon an acceleration in the credit pattern. If an acceleration in the credit pattern has occurred then:
 - i. The parole eligibility date shall be recalculated;
 - ii. A new parole release date shall be established; and
 - iii. The inmate shall be notified of the new parole release date.
2. Certify to the senior Board representative at the institution, within 72 hours prior to the date of release, that the inmate has maintained the credit pattern as established by the classification department. If the inmate has failed to earn the projected credits then:
 - i. The inmate's release on parole shall be deferred;
 - ii. The parole eligibility date shall be recalculated;
 - iii. A new parole release date shall be established unless good cause exists to suspend or rescind the parole release date pursuant to N.J.A.C. 10A:71-5; and
 - iv. The inmate shall be notified that release on parole has been deferred and that a new parole release date has been established.

(d) If such Board members do not concur with the recommendation of the hearing officer, the members shall refer the case to the appropriate Board panel for a hearing and issue a written decision to the inmate, the Department and the Board within seven days consisting of the reasons for the Board members' referral.

(e) If such Board members do not reach a unanimous decision, the Chairperson shall determine whether the case shall be referred to the appropriate Board panel for a hearing or whether the case shall be referred to a third Board panel member for review.

1. If the determination is rendered by the Chairperson that the case shall be referred to the appropriate Board panel for a hearing, a written decision shall be issued to the inmate, the Department and the Board within seven days consisting of the reasons for the referral.

2. If the Chairperson refers the case to a third Board panel member and upon review it is the majority vote of the Board panel members to concur with the recommendation of the hearing officer, parole release shall be certified pursuant to (b) above.

Amended by R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Section substantially amended.

Amended by R.1990 d.141, effective March 5, 1990.

See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

New (c) added; (c)-(d) recodified as (d)-(e).

Amended by R.1994 d.510, effective October 17, 1994.

See: 26 N.J.R. 2189(a), 26 N.J.R. 4190(a).

Amended by R.1995 d.109, effective February 21, 1995.

See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).

10A:71-3.17 Board panel hearing; scheduling for adult inmates

(a) Any case referred to a Board panel by a hearing officer pursuant to N.J.A.C. 10A:71-3.15 or by Board members pursuant to N.J.A.C. 10A:71-3.16 shall be scheduled by the Chairperson for a hearing by the appropriate Board panel.

(b) Except as provided in N.J.A.C. 10A:71-3.50, such hearing shall be conducted at least 30 days or as soon as practicable in advance of the inmate's actual parole eligibility date.

(c) The Chairperson, when practicable, shall notify the chief executive officer of the schedule of such hearings at least seven days prior to the hearings.

(d) It shall be the responsibility of the chief executive officer to immediately notify the Chairperson if any inmate scheduled for a hearing is transferred from the institution or is not expected to be available for any reason.

(e) It shall be the responsibility of the chief executive officer to make arrangements to have any inmate scheduled for a parole hearing brought to the hearing, unless such inmate is physically unable to appear or refuses to appear for the hearing.

(f) It shall be the responsibility of the chief executive officer or designee to notify the Board panel, in writing, of the reason for the failure of an inmate to appear at a scheduled parole hearing.

Amended by R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

(b) substantially amended; (f) added.

Amended by R.1990 d.141, effective March 5, 1990.

See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

N.J.A.C. cite changed in (b).

Amended by R.1995 d.109, effective February 21, 1995.

See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).

Case Notes

Parole hearing was untimely. *New Jersey State Parole Bd. v. Cestari*, 224 N.J.Super. 534, 540 A.2d 1334 (A.D.1988), certification denied 111 N.J. 649, 546 A.2d 558.

10A:71-3.18 Board panel hearing; notice of decision for adult inmates

(a) At the conclusion of the Board panel hearing, the Board panel shall take one of the following actions:

1. Certify parole release, except as provided in (b) below, as soon as practicable after the parole eligibility date by:

i. Establishing a parole release date based upon the inmate's projected parole eligibility date; or

ii. Establishing a specific parole release date; and

iii. Establishing appropriate pre-release conditions; and

iv. Establishing appropriate special parole conditions pursuant to N.J.A.C. 10A:71-6.

2. Deny parole and establish a future parole eligibility date pursuant to N.J.A.C. 10:71-3.21.

3. Defer decision pending the receipt of relevant information or the conducting of an evaluation pursuant to N.J.A.C. 10A:71-3.7(h) or (i).

i. No such deferral shall extend more than 90 days past the inmate's parole eligibility date.

ii. If such additional relevant information is of an adverse nature, then the parole hearing shall be reconvened as soon as possible after receipt of such information.

(b) If the Board panel determines that the inmate shall be placed in a halfway house facility for a specified time period as a pre-release condition, the Board panel shall refer the matter to the Board for review. If the Board upon reviewing the record concurs that placement of the inmate in a half-way house facility for a specified time period is an appropriate pre-release condition, the Board shall refer the inmate's case to the Department for placement of the inmate in an appropriate half-way house facility. If the Department denies such placement, the decision and the reasons therefor shall be provided in writing by the Department to the Board. Upon receiving notice that placement has been denied, the Board panel shall determine whether the pre-release condition should be eliminated and the grant

of parole affirmed or whether the inmate should be denied parole.

(c) Pursuant to N.J.S.A. 30:4-123.55(f), the Board panel shall not certify parole release in the case of an offender serving a term for the crime of murder. In such a case, if the Board panel is of the opinion that parole release is appropriate, the Board panel shall automatically refer the case for a hearing before the Board. The provisions of this subsection shall not apply to an inmate who has his or her parole revoked and is returned to custody pursuant to N.J.S.A. 30:4-123.63.

(d) If a parole release date has been established based upon a projected eligibility date, the chief executive officer of the institution or designee shall:

1. Notify the senior Board representative at the institution immediately upon an acceleration in the credit pattern. If an acceleration in the credit pattern has occurred then:

- i. The parole eligibility date shall be recalculated;
- ii. A new parole release date shall be established; and
- iii. The inmate shall be notified of the new parole release date.

2. Certify to the senior Board representative at the institution, within 72 hours prior to the date of release, that the inmate has maintained the credit pattern as established by the classification department. If the inmate has failed to earn the project credits then:

- i. The inmate's release on parole shall be deferred;
- ii. The parole eligibility date shall be recalculated;
- iii. A new parole release date shall be established unless good cause exists or suspend or rescind the parole release date pursuant to N.J.A.C. 10A:71-5; and
- iv. The inmate shall be notified that release on parole has been deferred and that a new parole release date has been established.

(e) Within 30 days of the Board panel hearing, the Board panel shall issue a written notice to the inmate, the Department, the Board and the Prosecutor for the county from which the inmate was committed.

(f) Such notice shall consist of the decision of the Board panel, and, if the Board panel's decision is to deny parole or defer decision, the notice shall contain the reasons therefor, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or the rules and regulations of the Department.

Amended by R.1985 d.213, effective May 6, 1985.
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).
Section substantially amended.
Amended by R.1988 d.336, effective July 18, 1988.

See: 19 N.J.R. 1396(b), 20 N.J.R. 1716(b).

Deleted (a)4.

Amended by R.1990 d.141, effective March 5, 1990.

See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

New (b) added; (b)-(d) recodified to (c)-(e).

Amended by R.1995 d.109, effective February 21, 1995.

See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).

Amended by R.1998 d.144, effective March 16, 1998.

See: 29 N.J.R. 4243(a), 30 N.J.R. 1044(a).

In (a)3i, increased the deferral limit from 90 days to 180 days.

Amended by R.1998 d.391, effective August 3, 1998.

See: 30 N.J.R. 1176(a), 30 N.J.R. 2920(a).

In (a)3, added "or the conducting of an evaluation pursuant to N.J.A.C. 10A:71-3.7(h) or (i)" at the end of the introductory paragraph.

Amended by R.2001 d.188, effective June 4, 2001.

See: 33 N.J.R. 646(a), 33 N.J.R. 1919(a).

In (a)3ii, substituted "90 days past the inmate's parole eligibility date" for "180 days unless otherwise authorized by the Board".

10A:71-3.19 Board hearing; scheduling for adult inmates

(a) A case referred to the Board by a Board panel pursuant to N.J.A.C. 10A:71-3.18(c) shall be scheduled by the Chairperson for a hearing by the Board.

(b) Such hearing shall be conducted at least 30 days or as soon as practicable in advance of the inmate's actual parole eligibility date.

(c) The Chairperson, when practicable, shall notify the chief executive officer of the institution, appropriate Department personnel and the inmate of the date of the hearing at least seven days prior to the hearing.

(d) It shall be the responsibility of the chief executive officer of the institution and appropriate Department personnel to make the necessary arrangements to have the inmate present at the New Jersey State Prison on the hearing date.

(e) It shall be the responsibility of the chief executive officer of the institution to immediately notify the Chairperson if the inmate is unavailable, for any reason, to attend the hearing.

New Rule: R.1990 d.141, effective March 5, 1990.

See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

Amended by R.1995 d.109, effective February 21, 1995.

See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).

Case Notes

Rule permits a lengthy future eligibility term to be set where the presumptive term would be clearly inappropriate for the circumstances of the offense, the history of the offender and his institutional behavior; imposition of such a term on prisoner serving term prior to rule's adoption not an ex post facto application of parole rules. *Thompson v. New Jersey State Parole Bd.*, 210 N.J.Super. 107, 509 A.2d 241 (App. Div.1986).

10A:71-3.20 Board hearing; notice of decision for adult inmates

(a) At the conclusion of the Board hearing, the Board shall take one of the actions as specified in N.J.A.C. 10A:71-3.18(a).

(b) If the Board establishes a parole release date based upon a projected eligibility date, the provisions of N.J.A.C. 10A:71-3.18(d) shall apply.

(c) If the Board determines that the inmate shall be placed in a half-way house facility for a specified time period as a pre-release condition, the Board shall refer the inmate's case to the Department for placement of the inmate in an appropriate half-way house facility. If the Department denies such placement, the decision and the reasons therefor shall be provided in writing by the Department to the Board. Upon receiving notice that placement has been denied, the Board shall determine whether the pre-release condition should be eliminated and the grant of parole affirmed or whether the inmate should be denied parole.

(d) Within 30 days of the Board hearing, the Board shall issue a written notice to the inmate, the Department and the Prosecutor for the county from which the inmate was committed.

(e) Such notice shall consist of the decision of the Board and, if the Board's decision is to deny or defer decision, the notice shall contain the reasons therefor, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or the rules and regulations of the Department.

New Rule: R.1990 d.141, effective March 5, 1990.
See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).
Amended by R.1995 d.109, effective February 21, 1995.
See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).

10A:71-3.21 Board panel action; schedule of future parole eligibility dates for adult inmates

(a) Upon determining to deny parole to a prison inmate, a two-member adult Board panel shall, based upon the following schedule, establish a future parole eligibility date upon which the inmate shall be primarily eligible for parole.

1. Except as provided herein, a prison inmate serving a sentence for murder, manslaughter, aggravated sexual assault or kidnapping or serving any minimum-maximum or specific sentence in excess of 14 years for a crime not otherwise assigned pursuant to this section shall serve 27 additional months.

2. Except as provided herein, a prison inmate serving a sentence for armed robbery or robbery or serving any minimum-maximum or specific sentence between eight and 14 years for a crime not otherwise assigned pursuant to this section shall serve 23 additional months.

3. Except as provided herein, a prison inmate serving a sentence for burglary, narcotic law violations, theft, arson or aggravated assault or serving any minimum-maximum or specific sentence of at least four but less than eight years for a crime not otherwise assigned pursuant to this section shall serve 20 additional months.

4. Except as provided herein, a prison inmate serving a sentence for escape, bribery, conspiracy, gambling or possession of a dangerous weapon or serving any minimum-maximum or specific sentence less than four years for a crime not otherwise assigned to this section shall serve 17 additional months.

(b) Upon determining to deny parole to a young adult inmate, a two-member young adult Board panel shall, based upon the following schedule, establish a future parole eligibility date upon which the inmate shall be primarily eligible for parole.

1. Except as provided herein, a young adult inmate serving a sentence for a crime contained in Categories A or B of N.J.A.C. 10A:71-3.3 shall serve 24 additional months.

2. Except as provided herein, a young adult inmate serving a sentence for a crime contained in Category C of N.J.A.C. 10A:71-3.3 shall serve 20 additional months.

3. Except as provided herein, a young adult inmate serving a sentence for a crime contained in Category D of N.J.A.C. 10A:71-3.3 shall serve 16 additional months.

4. Except as provided herein, a young adult inmate serving a sentence for a crime contained in Category E of N.J.A.C. 10A:71-3.3 shall serve 12 additional months.

5. Except as provided herein, a young adult inmate serving a sentence for a crime contained in Category F of N.J.A.C. 10A:71-3.3 shall serve 10 additional months.

6. Except as provided herein, a young adult inmate serving a sentence for a crime contained in Category G of N.J.A.C. 10A:71-3.3 shall serve eight additional months.

(c) The future parole eligibility dates required pursuant to (a) and (b) above may be increased or decreased by up to nine months when, in the opinion of the Board panel, the severity of the crime for which the inmate was denied parole and the prior criminal record or other characteristics of the inmate warrant such adjustment.

(d) A three-member Board panel may establish a future parole eligibility date which differs from that required by the provisions of (a) or (b) and (c) above if the future parole eligibility date which would be established pursuant to such subsections is clearly inappropriate due to the inmate's lack of satisfactory progress in reducing the likelihood of future criminal behavior. In making the determination that the establishment of a future parole eligibility date pursuant to (a) or (b) and (c) above is clearly inappropriate, the three-member panel shall consider the factors enumerated in N.J.A.C. 10A:71-3.11.

1. If, in the opinion of a two-member Board panel denying parole, the future parole eligibility date which would be established pursuant to (a) or (b) and (c) above is clearly inappropriate as provided herein, the two-member Board panel shall refer the inmate's case to the third

Board panel member upon conclusion of the hearing. In such instances, the third Board panel member shall review all the records pertaining to the hearing.

2. The two-member Board panel shall, pursuant to N.J.A.C. 10A:71-3.18, notify the inmate in writing that parole has been denied, that a future parole eligibility date pursuant to (a) or (b) and (c) above has not been established and the reasons therefor, and that a three-member Board panel review will occur for the purpose of establishing a future parole eligibility term which differs from the provisions of (a) or (b) and (c) above.

3. The inmate shall have 30 days from the date notice is received to prepare and submit to the Board panel members a written statement. The statement may include any information the inmate may deem relevant to the evaluation of his case by the Board panel members.

4. The three-member Board panel shall, upon disposition of the case, state in writing to the inmate the reasons for the establishment of a future eligibility date which differs from the provisions of (a) or (b) and (c) above.

5. The decision of the three-member Board panel to establish a future parole eligibility date which differs from that required by the provisions of (a) or (b) and (c) above shall be by unanimous decision only. Failure to establish a future parole eligibility date pursuant to this subsection by unanimous decision shall result in the referral of the inmate's case to the Board for the establishment of a future parole eligibility date.

6. If the three-member Board panel fails to establish, by unanimous decision, a future parole eligibility date pursuant to this subsection, the three-member Board panel shall notify the inmate, in writing, that his case has been referred to the Board for the establishment of a future parole eligibility date.

7. The inmate shall have 30 days from the date notice is received pursuant to (d)6 above to prepare and submit a written statement containing any additional information which the inmate may deem relevant to the evaluation of his or her case by the Board.

8. The Board's establishment of a future parole eligibility date shall be based on the review of all records of the panel hearing. Upon disposition of the case, the Board shall state in writing to the inmate the reasons for the establishment of a future parole eligibility date which differs from the provisions of (a) or (b) and (c) above.

(e) The Board, upon the conclusion of a hearing conducted pursuant to N.J.A.C. 10A:71-3.18(c), may establish a future parole eligibility date which differs from that required by the provisions of (a) or (b) and (c) above if the future parole eligibility date which would be established pursuant to such subsections is clearly inappropriate in consideration of the circumstances of the crime, the characteristics and prior criminal record of the inmate and the inmate's institutional behavior.

1. The Board shall include in the notice issued pursuant to N.J.A.C. 10A:71-3.20 the reasons for the establishment of a future parole eligibility date which differs from the provisions of (a) or (b) and (c) above.

(f) If a three-member Board panel or the Board establishes, in the case of an inmate sentenced pursuant to N.J.S.A. 2A:113-4 for a term of life imprisonment, N.J.S.A. 2A:164-17 for a fixed minimum and maximum term or N.J.S.A. 2C:1-1(b), a future parole eligibility date which differs from that required by the provisions of (a) and (c) above, the inmate shall be scheduled for an annual review hearing. The first annual review hearing shall be scheduled within 18 months from the month in which the decision to deny parole was rendered. Thereafter, annual review hearings shall be scheduled every 12 months until the inmate is within seven months of the actual parole eligibility date.

1. At the annual review hearing, which shall be conducted by a Board panel as designated by the Chairperson, the Board panel shall assess the inmate's progress in institutional or community educational, training or other programs, progress in substantially altering those factors which led to the inmate's incarceration, and progress which may indicate that the punitive aspects of the sentence have been satisfied in that the rehabilitative potential of the inmate may be achieved by a date earlier than the future parole eligibility date.

2. At the conclusion of the annual review hearing, the Board panel shall:

i. Accept and note documentary evidence of the progress that the inmate has achieved; and

ii. Determine whether the inmate's case shall be referred for a parole release hearing pursuant to this subchapter; or

iii. Determine whether the progress achieved by the inmate merits a reduction in the future parole eligibility date. If such determination is made, the Board panel shall recommend to the three-member Board panel or the Board, as appropriate, that a reduction in future parole eligibility date be granted; or

iv. Defer a decision pending receipt of additional information; or

v. Continue the case until the next annual review.

3. The Board panel shall advise the inmate in writing of its determination.

4. If the Board panel determines that the inmate's case shall be referred for a parole release hearing pursuant to this subchapter, the Board panel shall provide personal notice to each member of the three-member Board panel or the Board, as appropriate, of its determination.

5. If the Board panel recommends that a reduction be granted in the future parole eligibility term, the three-member Board panel or the Board, as appropriate, shall review the inmate's case and the Board panel's recommendation within 60 days of the Board panel's determination. The three-member Board panel or the Board shall, within 14 days of reviewing the inmate's case, notify the inmate in writing whether the future parole eligibility date will be reduced and, if so, the specific time period by which the future parole eligibility date will be reduced.

6. The provisions of N.J.A.C. 10A:71-3.8 shall not apply to an annual review hearing conducted pursuant to this subsection.

(g) If an inmate's maximum sentence(s) will expire prior to the future parole eligibility date otherwise established by the Board panel or Board, the Board panel or Board shall direct that such inmate serve his or her maximum sentence(s).

(h) The prior provisions of (b) above shall apply to young adult inmates whose offenses were committed prior to May 6, 1985 and shall continue in effect for that purpose. The amendments to (b) above shall be applicable to young adult inmates, respectively, whose offenses were committed on or after May 6, 1985.

(i) The amendments to (d) above shall apply to the cases of adult inmates in which a decision to deny parole has been rendered on or after May 6, 1985.

Amended by R.1980 d.226, effective May 21, 1980.

See: 12 N.J.R. 335(b).

Amended by R.1980 d.359, effective August 7, 1980.

See: 12 N.J.R. 420(b), 12 N.J.R. 538(a).

Amended by R.1981 d.179, effective June 7, 1981.

See: 13 N.J.R. 228(c), 13 N.J.R. 364(c).

(c): "nine months" was "six months".

Amended by R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Section substantially amended.

Amended by R.1988 d.336, effective July 18, 1988.

See: 19 N.J.R. 1396(b), 20 N.J.R. 1716(b).

Substituted "within 18" for "12".

Administrative correction to (b)3.

See: 21 N.J.R. 3777(b).

Amended by R.1990 d.141, effective March 5, 1990.

See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

Recodified from N.J.A.C. 10A:71-3.19; changed terminology to that of the Comprehensive Drug Reform Act of 1986.

Administrative correction to (b)3: changed 10 to 16.

See: 22 N.J.R. 1265(d).

Amended by R.1990 d.257, effective May 21, 1990.

See: 22 N.J.R. 899(a), 22 N.J.R. 1609(a).

Added new (e) and recodified (e)-(i) as (f)-(j), with no change in text.

Amended by R.1993 d.399, effective August 16, 1993.

See: 25 N.J.R. 1665(a), 25 N.J.R. 3826(a).

Amended by R.1995 d.109, effective February 21, 1995.

See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).

Amended by R.1999 d.189, effective June 7, 1999.

See: 31 N.J.R. 710(a), 31 N.J.R. 1490(a).

In (d), rewrote the introductory paragraph.

Case Notes

Parole eligibility date had to be set, even if maximum term would expire before future eligibility date. *Watson v. DiSabato*, D.N.J. 1996, 933 F.Supp. 390.

Consecutive sentences may not be imposed upon juveniles. *State in Interest of J.L.A.*, 262 N.J.Super. 78, 619 A.2d 1321 (A.D.1993), certification granted 134 N.J. 477, 634 A.2d 525, reversed 136 N.J. 370, 643 A.2d 538.

Regulation pertaining to commutation credits for purposes of parole eligibility was valid. *Alevras v. Delanoy*, 245 N.J.Super. 32, 583 A.2d 778 (A.D.1990), certification denied 126 N.J. 330, 598 A.2d 888.

10A:71-3.22 Notice of tentative parole release dates; juvenile inmates

(a) Upon the admission of a juvenile inmate to a State correctional facility, it shall be the responsibility of the chief executive officer of such facility to promptly notify the Board and provide to the Board such documents and information as specified in N.J.A.C. 10A:71-3.28 as may be required by the Board in order to establish a tentative parole release date.

(b) Upon such notification and within 90 days of admission to a State correctional facility, each juvenile inmate shall be informed in writing of his or her tentative parole release date.

(c) Upon establishment of the tentative parole release date pursuant to N.J.A.C. 10A:71-3.23, the juvenile Board panel shall notify in writing the juvenile inmate's parent(s) or guardian(s), the committing court, the prosecuting authority, and the chief executive officer of the institution or designee of the tentative parole release date established. The chief executive officer or designee may further distribute notice of the tentative parole release date as deemed appropriate.

R.1980 d.488, effective November 6, 1980.

See: 12 N.J.R. 537(a), 12 N.J.R. 724(c).

Amended by R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

(b): "90 days" substituted for "6 months"; (c) substantially amended.

Amended by R.1988 d.336, effective July 18, 1988.

See: 19 N.J.R. 1396(b), 20 N.J.R. 1716(b).

Added tentative release.

Amended by R.1990 d.141, effective March 5, 1990.

See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

Recodified from N.J.A.C. 10A:71-3.22; changed internal N.J.A.C. references.

10A:71-3.23 Establishment of tentative parole release dates; juvenile inmates

(a) This subsection shall apply to juvenile inmates whose offenses were committed prior to February 21, 1995. Except as provided herein, tentative parole release dates shall be established by a hearing officer, a juvenile Board panel member or the juvenile Board panel pursuant to the following schedule of presumptive tentative parole release terms and ranges for tentative parole release terms.

Act of Delinquency	Presumptive Term (months)	Range (months)
Murder (N.J.S.A. 2C:11-3(a)(1) or (2))	100	80-120
Murder (N.J.S.A. 2C:11-3(a)(3))	50	40-60
Crime of First Degree (except Murder)	20	16-24
Crime of Second Degree	16	12-18
Manufacturing, Distributing or Dispensing a Controlled Dangerous Substance second degree, Possession with Intent to Manufacture, Distribute or Dispense a Controlled Dangerous substance second degree	12	10-14
Crime of Third Degree	10	8-12
Crime of Fourth Degree	5	4-6
Disorderly Persons Offense	1.5	1-2

(b) This subsection shall apply to juvenile inmates whose offenses were committed on or after February 21, 1995. Except as provided herein, tentative parole release dates shall be established by a hearing officer, a juvenile Board panel member or the juvenile Board panel pursuant to the following schedule of presumptive tentative parole release terms and ranges for tentative parole release terms.

Act of Delinquency	Presumptive Term (months)	Range (months)
Murder (N.J.S.A. 2C:11-3(a)(1) or (2))	100	100-180
Murder (N.J.S.A. 2C:11-3(a)(3))	40	40-120
Crime of First Degree (except Murder)	20	16-42
Crime of Second Degree	16	12-20
Manufacturing, Distributing or Dispensing a Controlled Dangerous Substance second degree, Possession with Intent to Manufacture, Distribute or Dispense a Controlled Dangerous Substance second degree	12	12-20
Crime of Third Degree	12	12-20
Crime of Fourth Degree	5	4-6
Disorderly Persons Offense	1.5	1-2

(c) If a juvenile inmate has been committed for several acts of delinquency, the act of delinquency which represents the most serious act of delinquency shall be considered in determining the tentative parole release date.

(d) The hearing officer, the juvenile Board panel member or the juvenile Board panel shall consider the following mitigating and aggravating factors in determining whether to alter the tentative parole release date from the presumptive term established pursuant to (a) or (b) above:

1. Mitigating factors:
 - i. The inmate has no previous adjudications of delinquency.
 - ii. The inmate has no previous commitments to a State juvenile facility.

iii. The inmate has previously adjusted successfully to parole or probation.

iv. The inmate acted under strong provocation.

v. The inmate did not contemplate that his or her conduct would cause or threaten serious injury.

2. Aggravating factors:

i. The inmate has an extensive prior record.

ii. The inmate's prior record consists of particularly serious acts of delinquency.

iii. The inmate has been previously committed to a State juvenile facility.

iv. The inmate has previously adjusted unsuccessfully to parole or probation supervision.

v. The current act of delinquency was premeditated.

vi. The inmate used a weapon during the current act of delinquency.

vii. The current act of delinquency involved an injury to the victim.

viii. The inmate has received additional concurrent or consecutive commitments.

(e) The juvenile Board panel may establish a tentative parole release date outside the range contained in the provisions of (a) or (b) above, if a tentative parole release date within the range is clearly inappropriate in view of the circumstances of the act of delinquency, the prior record of delinquency, the characteristics of the inmate or the imposition of any extended term imposed pursuant to N.J.S.A. 2A:4A-44(d)(3) and (d)(4).

1. If, in the opinion of the hearing officer or juvenile Board panel member establishing the tentative parole release date, a date within the range contained in the provisions of (a) or (b) above is clearly inappropriate in view of the circumstances of the act of delinquency, the prior records of delinquency, the characteristics of the inmate or the imposition of any extended term imposed pursuant to N.J.S.A. 2A:4A-44(d)(3) and (d)(4), the hearing officer or the juvenile Board panel member shall refer such a case to the juvenile Board panel.

2. The juvenile Board panel shall, upon disposition of the case, state in writing to the juvenile inmate, the juvenile inmate's parent(s) or guardian(s), the committing court, the prosecuting authority, and the chief executive officer of the institution or designee, the reasons for the establishment of any tentative parole release date which is outside the range contained in the provisions of (a) or (b) above.

3. The decision of the juvenile Board panel to establish a tentative parole release date which is outside the range contained in the provisions of (a) or (b) above may

be reconsidered pursuant to N.J.A.C. 10A:71-4.1 or appealed pursuant to N.J.A.C. 10A:71-4.2(f).

(f) Pursuant to R.3:21-8, credit for time served in a county detention facility prior to the date of sentence shall reduce the tentative parole release date established pursuant to this section.

(g) In no case shall a juvenile inmate committed by the Family Court to a term of incarceration be released on parole without the consent of the sentencing court prior to the service of one-third of any term imposed for murder or a crime of the first, second or third degree, sale or distribution of controlled dangerous substance, possession of controlled dangerous substance with intent to distribute or possession of controlled dangerous substance, including any extended term imposed pursuant to N.J.S.A. 2A:4A-44(d)(3) and (d)(4) or one-fourth of any term imposed for any other crime.

As amended, R.1980 d.488, effective November 6, 1980.

See: 12 N.J.R. 537(a), 12 N.J.R. 724(c).

Amended by R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Section substantially amended.

Amended by R.1988 d.336, effective July 18, 1988.

See: 19 N.J.R. 1396(b), 20 N.J.R. 1716(b).

Substantially amended.

Amended by R.1989 d.145, effective March 20, 1989.

See: 20 N.J.R. 2747(b), 21 N.J.R. 768(a).

Requirement of prior notification to a juvenile inmate of the Juvenile Panel's intent to establish a tentative parole release date outside of the specified range, eliminated.

Amended by R.1990 d.141, effective March 5, 1990.

See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

Recodified from N.J.A.C. 10A:71-3.21; utilized offense terminology of Comprehensive Drug Reform Act of 1986.

Amended by R.1995 d.109, effective February 21, 1995.

See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).

Amended by R.1997 d.168, effective April 7, 1997.

See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (d)1ii and (d)2iii, substituted "State juvenile facility" for "State correctional facility".

Law Review and Journal Commentaries

Juveniles—Sentencing. P.R. Chenoweth, 137 N.J.L.J. No. 10, 59 (1994).

Case Notes

Juveniles who have committed two or more acts of delinquency may be sentenced to consecutive terms. State in Interest of J.L.A., 136 N.J. 370, 643 A.2d 538 (1994).

Consecutive sentences may not be imposed upon juveniles. State in Interest of J.L.A., 262 N.J.Super. 78, 619 A.2d 1321 (A.D.1993), certification granted 134 N.J. 477, 634 A.2d 525, reversed 136 N.J. 370, 643 A.2d 538.

10A:71-3.24 Alteration of tentative parole release dates: juvenile inmates

(a) At the time of a quarterly review, any previously established parole release date may be altered pursuant to N.J.A.C. 10A:71-3.30 or 3.32.

(b) If the juvenile inmate has participated satisfactorily in institutional programs or demonstrated good institutional adjustment, the parole release date may be reduced.

1. If such inmate's level of institutional adjustment or program participation is above average, the reduction may be at the rate of 15 days for every month of the tentative parole release term.

2. If such inmate's level of institutional adjustment or program participation is average, the reduction may be at the rate of 10 days for every month of the tentative parole release term.

3. If such inmate's level of institutional adjustment or program participation is below average, the reduction may be at the rate of five days for every month of the tentative parole release term.

4. If such inmate's level of institutional adjustment or program participation is poor, no reduction may be made.

(c) The juvenile Board panel or a juvenile Board panel member may reduce a tentative parole release date outside of the schedule contained in the provisions of this subsection when deemed appropriate in view of the juvenile inmate's participation in institutional programs or the juvenile inmate's institutional adjustment.

(d) If a juvenile inmate has committed serious and/or persistent institutional infractions or, has demonstrated poor institutional adjustment, the tentative parole release date may be increased. The adjusted tentative parole release date shall not be established at a date which exceeds 12 months from the previous tentative parole release date.

R.1980 d.448, effective November 6, 1980.

See: 12 N.J.R. 537(a), 12 N.J.R. 724(c).

Amended by R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Section substantially amended.

Amended by R.1986 d.306, effective August 4, 1986.

See: 18 N.J.R. 929(a), 18 N.J.R. 1610(a).

Deleted text in (c) "upon the recommendation by a hearing officer".

Amended by R.1988 d.336, effective July 18, 1988.

See: 19 N.J.R. 1396(b), 20 N.J.R. 1716(a).

Amended by R.1990 d.141, effective March 5, 1990.

See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

Recodified from N.J.A.C. 10A:71:3-22; changed references to N.J.A.C.

10A:71-3.25 Scheduling of quarterly reviews; juvenile inmates

(a) Except as provided herein, each juvenile inmate shall be scheduled for a quarterly review during the third month following the establishment of the tentative parole release date and during each third month thereafter; provided, however, that the juvenile Board panel may direct that a quarterly review be conducted prior to a quarterly review otherwise required pursuant to this section.

1. The Chairperson shall establish a schedule of quarterly reviews to be conducted by a hearing officer or juvenile Board panel member assigned by the Chairperson.

2. The Chairperson, when practicable, shall notify the chief executive officer of the institution of the schedule of such quarterly reviews at least seven days prior to the date of the quarterly review.

3. It shall be the responsibility of the chief executive officer to immediately notify the Chairperson if any juvenile inmate scheduled for a quarterly review is transferred from the institution or is not expected to be available for any reason.

4. It shall be the responsibility of the chief executive officer of the institution to make arrangements to have any juvenile inmate scheduled for a quarterly review brought to the review, unless such juvenile is physically unable to appear or refuses to appear for the quarterly review.

5. It shall be the responsibility of the chief executive officer of the institution or designee to notify the assigned hearing officer, the juvenile Board panel member or the juvenile Board panel, in writing, of the effort expended to produce the juvenile inmate and the reason(s) for the failure of the juvenile inmate to appear at a scheduled quarterly review.

R.1980 d.488, effective November 6, 1980.

See: 12 N.J.R. 537(a), 12 N.J.R. 724(c).

Amended by R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Section substantially amended.

Amended by R.1988 d.336, effective July 18, 1988.

See: 19 N.J.R. 1396(b), 20 N.J.R. 1716(b).

Added tentative.

Recodified from N.J.A.C. 10A:7-3.23, effective March 5, 1990.

See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

Cross References

Exception, see N.J.A.C. 10A:71-3.32.

10A:71-3.26 Factors considered at quarterly reviews; juvenile inmates

(a) Parole decisions shall be based on the aggregate of all pertinent factors, including material supplied by the juvenile inmate and reports and material which may be submitted by any person or agencies which have knowledge of the juvenile inmate.

(b) The hearing officer, juvenile Board panel member, juvenile Board panel or Board shall consider the following factors and in addition may consider any other factors deemed relevant:

1. Commission of an act of delinquency when incarcerated.
2. Commission of serious institutional disciplinary infractions.
3. Nature and pattern of previous acts of delinquency.
4. Adjustment to previous probation, parole and incarceration.
5. Facts and circumstances of the current act of delinquency.
6. Aggravating and mitigating factors surrounding the act of delinquency.

7. Pattern of less serious institutional disciplinary infractions.

8. Participation in institutional programs which could have led to the improvement of problems diagnosed at admission or during incarceration. This includes, but is not limited to, participation in substance abuse programs, academic or vocational education programs, work assignments and individual or group counseling.

9. Statements by institutional staff, with supporting documentation, that the inmate, if released, is likely to cause injury to persons or substantial injury to property.

10. Documented pattern of relationships with institutional staff or inmates.

11. Documented change in attitude toward self or others.

12. Documentation reflecting personal goals, personal strengths or motivation for law-abiding behavior.

13. Mental and emotional health.

14. Parole plans and the investigation thereof.

15. Status of family relationships at the time of the case review.

16. Availability of community resources or support services for inmates who have a demonstrated need for same.

17. Statements by the inmate reflecting on the likelihood that he or she, if released, will cause injury to persons or substantial injury to property.

18. History of employment and education.

19. Family history.

20. Statement by the court reflecting the reasons for the commitment.

21. Statements or evidence presented by the appropriate prosecutor's office, the Office of the Attorney General, or any other criminal justice agency.

22. Statement or testimony of any victim or the nearest relative(s) of a murder victim.

(c) Any detainers shall be noted by the hearing officer, juvenile Board panel member, juvenile Board panel or Board and shall not be grounds for denial of parole.

R.1980 d.488, eff. November 6, 1980.

See: 12 N.J.R. 537(a), 12 N.J.R. 724(c).

Amended by R.1985 d.213, eff. May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

(b)21 and 22 added.

Recodified from N.J.A.C. 10A:71-3.24, effective March 5, 1990.

See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

10A:71-3.27 Quarterly review procedures; juvenile inmates

(a) Quarterly reviews shall be conducted by a hearing officer, a juvenile Board panel member or the juvenile Board panel as determined by the Chairperson and shall include a personal interview with the juvenile inmate.

(b) The purpose of the quarterly review shall be to determine whether it appears that the juvenile inmate, when released, will not cause injury to persons or substantial injury to property, to determine whether the tentative parole release date will be reduced pursuant to N.J.A.C. 10A:71-3.24(a), (b) or (c), or to determine whether the tentative parole release date will be increased pursuant to N.J.A.C. 10A:71-3.24(d).

(c) The hearing officer, juvenile Board panel member or juvenile Board panel may consider any relevant and reliable documents or statements.

(d) Prior to the evaluation segment of the quarterly review, a designated Board representative, the hearing officer, or the juvenile Board panel member(s) shall discuss with and explain to the juvenile inmate all documents relevant to the juvenile inmate's case, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or the rules and regulations of the Commission.

R.1980 d.488, eff. November 6, 1980.
See: 12 N.J.R. 537(a), 12 N.J.R. 724(c).
Amended by R.1985 d.213, eff. May 6, 1985.
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Section substantially amended.

(e) recodified to 3.26.
Amended by R.1988 d.336, effective July 18, 1988.
See: 19 N.J.R. 1396(b), 20 N.J.R. 1716(b).

Deleted text in (b) "juvenile inmate's case ..." and inserted new "tentative parole release ...".
Amended by R.1990 d.141, effective March 5, 1990.
See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).
Recodified from N.J.A.C. 10A:71-3.25; internal N.J.A.C. cites changed.
Amended by R.1997 d.168, effective April 7, 1997.
See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (d), substituted "Commission" for "Department".

10A:71-3.28 Preparation of progress reports; juvenile inmate

(a) Prior to a quarterly or annual review, it shall be the responsibility of the chief executive officer of the institution or designee to prepare and file with the hearing officer or juvenile Board panel a report concerning the juvenile inmate.

(b) The report shall include the following:

1. The commitment order(s), including any written reasons for the commitment;
2. The predisposition report(s);
3. An appraisal of the inmate's institutional housing, work, education and program participation;

4. An investigative report by the assigned parole officer on the inmate's parole plans;

5. An up-to-date report on any outstanding detainee(s);

6. A complete report on the juvenile inmate's social, physical and mental condition, including any psychological or psychiatric reports and any additional reports requested by the juvenile Board panel member(s) or hearing officer;

7. Any additional information pertaining to the likelihood that the juvenile inmate, if released, will cause injury to persons or substantial injury to property;

(c) The reviewing juvenile Board panel member(s) shall submit such progress report and any other documents deemed relevant or necessary with the notification of reduction in the tentative parole release date or certification of parole release to the sentencing court in those cases in which court approval is required. Additional information or documents shall be submitted to the sentencing court upon the request of the sentencing court.

R.1980 d.488, eff. November 6, 1980.
See: 12 N.J.R. 537(a), 12 N.J.R. 724(c).
Amended by R.1985 d.213, eff. May 6, 1985.
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Recodified with substantial amendments from N.J.A.C. 10A:71-3.25(e).

Amended by R.1988 d.336, effective July 18, 1988.
See: 19 N.J.R. 1396(b), 20 N.J.R. 1716(b).

Added tentative; deleted text from (a)5 and substituted new.
Recodified from N.J.A.C. 10A:71-3.26, effective March 5, 1990.

See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).
Amended by R.1997 d.168, effective April 7, 1997.
See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (b)4, substituted "assigned parole officer" for "Bureau of Parole".

10A:71-3.29 Quarterly review notice of decision: juvenile inmates

(a) At the conclusion of the quarterly review conducted by a hearing officer, the hearing officer shall:

1. Recommend to a member of the juvenile Board panel that the juvenile inmate be released on parole; or

2. Defer a recommendation pending receipt of additional information; or

3. Continue the case until the next quarterly review; or

4. Recommend a decrease in the tentative parole release date in accordance with N.J.A.C. 10A:71-3.24(a), (b) or (c); or

5. Recommend an increase in the tentative parole release date in accordance with N.J.A.C. 10A:71-3.24(d); or

6. Refer the case to the juvenile Board panel.

(b) The hearing officer, at the conclusion of the quarterly review, shall immediately advise the juvenile inmate in writing of the determination and submit the written determination to the assigned member(s) of the juvenile Board panel.

(c) If the hearing officer defers a decision, the juvenile inmate and the assigned member(s) of the juvenile Board panel shall be advised in writing of the decision upon being rendered by the hearing officer.

(d) If the hearing officer recommends the juvenile inmate's release on parole, the juvenile inmate shall be advised of any special conditions recommended.

(e) At the conclusion of the quarterly review conducted by a juvenile Board panel member, the juvenile Board panel member shall render a determination(s) as provided in N.J.A.C. 10A:71-3.30(a).

(f) The provisions of N.J.A.C. 10A:71-3.30(b), (c) and (d) shall apply to those cases in which the quarterly review is conducted by a juvenile Board panel member.

R.1980 d.488, eff. November 6, 1980.
 See: 12 N.J.R. 537(a), 12 N.J.R. 724(c).
 Amended by R.1985 d.213, eff. May 6, 1985.
 See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).
 Amended by R.1986 d.306, effective August 4, 1986.
 See: 18 N.J.R. 929(a), 18 N.J.R. 1610(a).
 Added (e) and (f).
 Amended by R.1988 d.336, effective July 18, 1988.
 See: 19 N.J.R. 1396(b), 20 N.J.R. 1716(b).
 Added tentative.
 Amended by R.1990 d.141, effective March 5, 1990.
 See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).
 Recodified from N.J.A.C. 10A:71-3.27; N.J.A.C. cites changed.

10A:71-3.30 Board member review; juvenile inmates

(a) Upon review of the recommendation of the hearing officer, the assigned member of the juvenile Board panel shall render the following determination(s);

1. A certification of;
 - i. A parole release date;
 - ii. Appropriate additional pre-release condition(s); and
 - iii. Appropriate special condition(s) pursuant to subchapter 6 when the parole release date is within 90 days.
2. Defer a decision pending the receipt of relevant information.
3. Certify a reduction in the tentative parole release date pursuant to N.J.A.C. 10A:71-3.24(a), (b) or (c);
4. Certify an increase in the tentative parole release date pursuant to N.J.A.C. 10A:71-3.24(d);
5. Refer the case to the juvenile Board panel for a decision; or

6. Continue the case until the next quarterly review.

(b) A written report shall be filed with the juvenile Board panel within 21 days of the decision and shall consist of the determination of the juvenile Board panel member and the reasons therefor, except that information classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or the rules and regulations of the Commission. A copy of such notice shall be forwarded to the juvenile inmate, the juvenile's parent(s) or guardian(s), the committing court, the prosecutor, and the chief executive officer of the institution or designee. The chief executive officer or designee may further distribute the report as deemed appropriate.

(c) If the assigned member of the juvenile Board panel certifies a reduction in the tentative parole release date and/or certifies parole release on a specific date prior to the juvenile inmate serving one-third of the term imposed for the crime of murder or any crime of the first, second or third degree, sale or distribution of controlled dangerous substance, possession of controlled dangerous substance with intent to distribute or possession of controlled dangerous substance, including any extended term, or one-fourth of any term imposed for any other crime, the reduction in the tentative parole release date or the juvenile inmate's release on parole on the specific date shall be subject to the approval of the sentencing court.

(d) In those cases in which court approval of a reduction in the tentative parole release date and/or parole release of the juvenile inmate is required:

1. The assigned member of the juvenile Board panel shall notify the sentencing court of the determination certifying a reduction in the tentative parole release date or certifying parole release in the juvenile inmate's case and the specific parole release date. The sentencing court shall be forwarded such progress report and any other document deemed relevant and shall be forwarded any additional information or documents upon request.
2. The sentencing court shall have 30 days from the date of the notice to advise the juvenile Board panel member whether the reduction in the tentative parole release date or the parole release of the juvenile inmate on the specified date is approved.
3. If the sentencing court approves the reduction in the tentative parole release date, the juvenile inmate shall be released on the reduced date upon parole release being certified pursuant to this section.
4. If the sentencing court does not approved the reduction in the tentative parole release date, the tentative parole release date shall not be reduced.
5. When the sentencing court fails to respond within the 30 day time period, the juvenile inmate shall be released on the reduced date upon parole release being certified pursuant to this section.

6. If the sentencing court approves the release on parole of the juvenile inmate, the juvenile inmate shall be **released on the specified date.**

7. If the sentencing court does not approve the tentative parole release of the juvenile inmate on the specified date, the juvenile inmate shall be released on parole on the previously established and approved parole release date. The juvenile inmate shall also be scheduled for a quarterly review pursuant to N.J.A.C. 10A:71-3.25. The purpose of the quarterly review shall be to determine whether additional information has been developed which warrants the submission of the juvenile inmate's case to the sentencing court for reconsideration.

8. When the sentencing court fails to respond within the 30 day time period, the juvenile inmate shall be released on the certified parole release date.

9. The juvenile inmate shall be notified of the determination of the sentencing court. If parole on the specified date is not approved by the sentencing court, the juvenile inmate shall be notified accordingly and shall be advised of the date on which he can be released on parole status. The juvenile inmate shall also be notified when he will be scheduled for a quarterly review pursuant to N.J.A.C. 10A:71-3.25.

New Rule, R.1985 d.213, eff. May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Section 3.27 recodified to 3.29.

Amended by R.1986 d.306, effective August 4, 1986.

See: 18 N.J.R. 929(a), 18 N.J.R. 1610(a).

Deleted text "or juvenile board panel member".

Amended by R.1988 d.336, effective July 18, 1988.

See: 19 N.J.R. 1396(b), 20 N.J.R. 1716(b).

Added the word tentative.

Amended by R.1989 d.151 effective March 20, 1989.

See: 20 N.J.R. 2129(a), 21 N.J.R. 767(a).

Erroneous text at (a)4. and 8. deleted; 5. renumbered as 4., 7. renumbered as 5. to correct text.

Amended by R.1990 d.141, effective March 5, 1990.

See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

Recodified from N.J.A.C. 10A:71-3.28; internal N.J.A.C. cites changed.

Amended by R.1997 d.168, effective April 7, 1997.

See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (b), substituted "Commission" for "Department".

10A:71-3.31 In absentia quarterly reviews: juvenile inmates

(a) When a juvenile inmate is physically unable to appear at a quarterly or case review or if a juvenile inmate refuses to appear at a quarterly or case review, the hearing officer, juvenile Board panel member or juvenile Board panel, upon the chief executive officer of the institution or designee providing in writing a reasonable explanation for the juvenile inmate's inability or refusal to appear, may either consider the case in the juvenile inmate's absence or conduct an in person review where the juvenile inmate is currently located.

(b) If a mental competency examination has certified that the juvenile inmate is unable to understand the nature of the parole proceedings, the Board or an interested party may begin proceedings before the relevant court for appointment of a guardian ad litem for the inmate, who may appear before the Board on behalf of the juvenile inmate.

R.1980 d.488, eff. November 6, 1980.

See: 12 N.J.R. 537(a), 12 N.J.R. 724(c).

Amended by R.1985 d.213, eff. May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Section recodified with amendments from 3.27.

Recodified from N.J.A.C. 10A:71-3.29, effective March 5, 1990.

See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

10A:71-3.32 Juvenile Board panel case reviews

(a) Each juvenile inmate shall be scheduled for a comprehensive case review by the juvenile Board panel or a juvenile Board panel member during the twelfth month following the establishment of the tentative parole release date and yearly thereafter instead of the quarterly review otherwise required pursuant to N.J.A.C. 10A:71-3.25(a). A schedule of such case reviews shall be established in accordance with the provisions of N.J.A.C. 10A:71-3.25(a).

(b) The purpose of such case review shall be to monitor the cumulative progress of the juvenile inmate, to determine whether it appears that the juvenile inmate, when released, will not cause injury to persons or substantial injury to property, to determine the reasons for the continued confinement of the juvenile inmate, to determine whether the previously established tentative parole release date will be reduced pursuant to N.J.A.C. 10A:71-3.24(a), (b) or (c) and to determine whether the previously established tentative parole date will be increased pursuant to N.J.A.C. 10A:71-3.24(d).

(c) At the conclusion of the case review conducted by a juvenile Board panel member, the juvenile Board panel member shall recommend an action(s) as provided in (f) below.

1. The juvenile Board panel member shall immediately advise the juvenile inmate in writing of the determination and submit the written determination to a member of the juvenile Board panel for review.

2. If the juvenile Board panel member defers a decision, the juvenile inmate and the reviewing member of the juvenile Board panel shall be advised in writing of the determination upon being rendered.

3. If the juvenile Board panel member recommends the juvenile inmate's release on parole, the juvenile inmate shall be advised of any special conditions recommended.

(d) If the reviewing juvenile Board panel member concurs with the recommendation of the juvenile Board panel member, the determination shall be deemed to be the decision of the juvenile Board panel. The juvenile Board panel shall file a report pursuant to (g) below.

(e) If the reviewing juvenile Board panel member does not concur with the recommendation of the juvenile Board panel member, the juvenile inmate's case shall be referred for a case review before the juvenile Board panel. The juvenile inmate and the chief executive officer of the institution or designee shall be notified in writing that a case review will be scheduled before the juvenile Board panel.

(f) At the conclusion of the case review, the juvenile Board panel shall render the following determination(s):

1. A certification of:
 - i. A parole release date;
 - ii. Appropriate additional pre-release condition(s); and
 - iii. Appropriate special parole condition(s) pursuant to N.J.A.C. 10A:71-6 when the parole release date is within 90 days.
2. Defer decision pending receipt of relevant information;
3. Certify a reduction in the tentative parole release date pursuant to N.J.A.C. 10A:71-3.24(a), (b) or (c).
4. Certify an additional reduction in the tentative parole release date in an amount deemed appropriate;
5. Certify an increase in the tentative parole release date pursuant to N.J.A.C. 10A:71-3.24(d); or
6. Continue the case until the next quarterly review.

(g) The juvenile Board panel shall file a report of such case review within 21 days with the Board, the Commission, the committing court, the prosecutor, the chief executive officer of the institution or designee, the juvenile inmate and the juvenile's parents or guardians. Such report shall consist of the decision of the panel and the reasons therefor, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or the rules and regulations of the Commission. The chief executive officer or designee may further distribute the report as deemed appropriate.

(h) If the juvenile Board panel certifies a reduction in the tentative parole release date or certifies parole release on a specific date prior to the juvenile inmate serving one-third of the term imposed for a crime of murder or any crime of the first, second or third degree, sale or distribution of controlled dangerous substance, possession of controlled dangerous substance with intent to distribute or possession of controlled dangerous substance, including any extended term, or one-fourth of any term imposed for any other crime, the reduction in the tentative parole release date or the juvenile inmate's release on parole on the specific date shall be subject to the approval of the sentencing court.

(i) In those cases in which court approval of a reduction in the tentative parole release date and/or parole release of the juvenile inmate is required:

1. The juvenile Board panel shall notify the sentencing court of the determination certifying a reduction in the tentative parole release date or certifying parole release in the juvenile inmate's case and the specific parole release date. The sentencing court shall be forwarded such progress report and other documents deemed relevant and shall be forwarded any additional information or documents upon request.

2. The sentencing court shall have 30 days from the date of the notice to advise the juvenile Board panel whether the reduction in the tentative parole release date or the parole release of the juvenile inmate on the specified date is approved.

3. If the sentencing court approves the reduction in the tentative parole release date, the juvenile inmate shall be released on the reduced date upon parole release being certified pursuant to N.J.A.C. 10A:71-3.30 or this section.

4. If the sentencing court does not approve the reduction in the tentative parole release date, the parole release date shall not be reduced.

5. When the sentencing court fails to respond within the 30 day time period, the juvenile inmate shall be released on the reduced date upon parole release being certified pursuant to N.J.A.C. 10A:71-3.30 or this section.

6. If the sentencing court approves the release on parole of the juvenile inmate, the juvenile inmate shall be released on the specified date.

7. If the sentencing court does not approve the parole of the juvenile inmate on the specified date, the juvenile inmate shall be released on parole on the previously established and approved tentative parole release date. The juvenile inmate shall also be scheduled for a quarterly review pursuant to N.J.A.C. 10A:71-3.25. The purpose of the quarterly review shall be to determine whether additional information has been developed which warrants the submission of the juvenile inmate's case to the sentencing court for reconsideration.

8. When the sentencing court fails to respond within the 30 day time period, the juvenile inmate shall be released on parole on the certified parole release date.

9. The juvenile inmate shall be notified of the determination of the sentencing court. If parole on the specified date is not approved by the sentencing court, the juvenile inmate shall be notified accordingly and all be advised of the date on which he can be released on parole status. The juvenile inmate shall also be notified when he will be scheduled for a quarterly review pursuant to N.J.A.C. 10A:71-3.25.

R.1980 d.488, eff. November 6, 1980.
See: 12 N.J.R. 537(a), 12 N.J.R. 724(c).
Amended by R.1985 d.213, eff. May 6, 1985.
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).
Recodified with amendments from 3.28.

Amended by R.1988 d.336, effective July 18, 1988.

See: 19 N.J.R. 1396(b), 20 N.J.R. 1716(b).

Added tentative.

Amended by R.1990 d.141, effective March 5, 1990.

See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

Recodified from N.J.A.C. 10A:71-3.30; new (c)-(e) added and (c) recodified as (f).

Amended by R.1997 d.168, effective April 7, 1997.

See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (g), substituted "Commission" for "Department" in two places.

10A:71-3.33 Post-incarceration supervision

(a) Pursuant to N.J.S.A. 2A:4A-44(d)5, every disposition in the case of a juvenile that includes a term of incarceration for an offense committed on or after December 15, 1995 shall include a term of post-incarceration supervision equivalent to one-third of the term of incarceration imposed.

(b) The term of post-incarceration supervision shall commence upon release from incarceration or parole, whichever is later.

(c) During the term of post-incarceration supervision a juvenile shall remain in the community and in the legal custody of the Commission and be subject to conditions established pursuant to (d) below.

(d) Prior to release of a juvenile inmate at the expiration of the term of incarceration or prior to a juvenile parolee being terminated from formal parole supervision, the juvenile Board panel shall issue a written certificate which shall be delivered to the juvenile inmate or parolee.

1. Such certificate shall include as general conditions of post-incarceration supervision the conditions as specified in N.J.A.C. 10A:71-6.4(a) and (c).

2. The certificate shall also include any special conditions of supervision deemed appropriate by the juvenile Board panel.

3. Responsibility for the delivery of the certificate shall rest with the designated representative of the Commission.

4. At the time of delivery, the conditions of supervision shall be explained to the juvenile inmate or parolee.

(e) The juvenile inmate or parolee shall be required to acknowledge in writing receipt of the certificate. If the juvenile inmate or parolee refuses to acknowledge in writing receipt of the certificate, the designated representative of the Commission shall make a written record of the delivery of the certificate and the refusal of the juvenile inmate or parolee to acknowledge receipt of the certificate.

(f) Additional special conditions of supervision may be established by the designated representative of the Commission pursuant to N.J.A.C. 10A:71-6.4(i).

(g) As authorized by N.J.S.A. 2A:4A-44(d)5, a term of post-incarceration supervision may be terminated by the juvenile Board panel. Consideration to terminate the term of post-incarceration shall be in accordance with N.J.A.C. 10A:71-6.9(g).

(h) As authorized by N.J.S.A. 2A:4A-44(d)5, a term of post-incarceration supervision may be revoked and the juvenile returned to custody in accordance with the provisions of N.J.S.A. 30:4-123.59 to 123.65. In such a case, the provisions of N.J.A.C. 10A:71-7 shall be deemed to be in effect.

(i) The juvenile Board panel may upon the revocation of a term of post-incarceration supervision review the juvenile inmate's case pursuant to N.J.A.C. 10A:71-3.25 through 3.32 and determine whether the juvenile inmate may be released to post-incarceration supervision.

New Rule, R.1997 d.168, effective April 7, 1997.

See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

Former section recodified to N.J.A.C. 10A:71-3.34.

Amended by R.2000 d.50, effective February 7, 2000.

See: 31 N.J.R. 3579(a), 32 N.J.R. 472(b).

In (d)1 and (f), changed N.J.A.C. references.

10A:71-3.34 Calculation of parole eligibility: county inmates

(a) A county inmate committed for a specific term in a county jail, workhouse or penitentiary shall become primarily eligible for parole upon the service of any judicial or statutory mandatory minimum term or one-third of the sentence imposed where no judicial or statutory mandatory minimum term or 60 days of his aggregate term, whichever is greater.

(b) If the parole eligibility date is based on a judicial or statutory mandatory minimum term or 60 days of the aggregate term, the parole eligibility date shall include credit awarded by the sentencing court pursuant to R.3:21-8 for time served in the county jail prior to the date of sentence.

(c) If the parole eligibility date is based on one-third of the sentence imposed, the parole eligibility date shall include commutation credits pursuant to N.J.S.A. 2A:164-24, credit awarded by the sentencing court pursuant to R.3:21-8 for time served in the county jail prior to the date of sentence, and earned work and earned minimum custody credits pursuant to N.J.S.A. 30:8-28.4.

(d) In no case shall a county inmate be eligible for parole prior to the service of 60 days of his aggregate term, less credit awarded by the sentencing court pursuant to R.3:21-8 for time served in the county jail prior to the date of sentence.

New Rule, by R.1985 d.213, eff. May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Amended by R.1986 d.306, effective August 4, 1986.

See: 18 N.J.R. 929(a), 18 N.J.R. 1610(a).

Added text "awarded by the sentencing court".

Recodified from N.J.A.C. 10A:71-3.31, effective March 5, 1990.

See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).
Recodified from 10A:71-3.33 by R.1997 d.168, effective April 7, 1997.
See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

Former section recodified to N.J.A.C. 10A:71-3.35.

10A:71-3.35 Notice of parole eligibility: county inmates

(a) Whenever a county inmate's parole eligibility date is within six months of the date of sentence, the sentencing judge shall state such inmate's parole eligibility on the record. This action shall satisfy all public and inmate notice requirements.

New Rule, R.1985 d.213, eff. May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Recodified from N.J.A.C. 10A:71-3.32, effective March 5, 1990.

See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

Recodified from 10A:71-3.34 by R.1997 d.168, effective April 7, 1997.

See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

Former section recodified to N.J.A.C. 10A:71-3.36.

10A:71-3.36 Preparation of cases for parole hearings: county inmates

(a) Forty-five days in advance of the parole eligibility date, the chief executive officer of the institution of incarceration or designee shall initiate the preparation of up-to-date staff reports.

(b) It shall be the responsibility of the chief executive officer or designee to file a report concerning the county inmate with the designated hearing officer or appropriate Board panel within 30 days in advance of the parole eligibility date.

(c) Such report shall consist of the following information:

1. The commitment order, including the sentencing court's written reasons for any sentence imposed, on all sentences being served;

2. The pre-sentence report, including a criminal case history record, on any offense of the fourth degree or greater;

3. The municipal court complaint(s) upon which the inmate's commitment is based;

4. A criminal case history record in the case of a commitment from a municipal court;

5. Division of Motor Vehicle case record (or Driver's Abstract) in the case of a commitment for any motor vehicle violation(s) or related offense(s);

6. Any statement or information submitted by the sentencing court, the prosecutor, the probation office or any other interested agency;

7. The status of any detainer(s);

8. A report on the inmate's institutional adjustment, conduct and program participation including housing, work, educational or vocational training;

9. A report on the inmate's parole plan, when available;

10. The recommendation or comments of the chief executive officer or designee at their discretion;

11. Any other information reflecting on the likelihood that the inmate will commit a crime if released on parole;

12. The inmate's credit earning pattern as established by the chief executive officer or designee.

New Rule, R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Recodified from N.J.A.C. 10A:71-3.33, effective March 5, 1990.

See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

Recodified from 10A:71-3.35 by R.1997 d.168, effective April 7, 1997.

See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

Former section recodified to N.J.A.C. 10A:71-3.37.

10A:71-3.37 Inmate statements: county inmates

(a) It shall be the responsibility of the chief executive officer of the institution or designee to provide each inmate with a copy of the report filed pursuant to N.J.A.C. 10A:71-3.35 at the time such report is filed with the designated hearing officer or Board panel, except such information classified as confidential by the Board pursuant to N.J.A.C. 10A:71-2.1 or by the chief executive officer of the institution.

(b) The inmate may file with the designated hearing officer or the Board panel a written statement regarding such report and any other information such inmate wishes the hearing officer or Board panel to review.

New Rule, R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Recodified from N.J.A.C. 10A:71-3.34, effective March 5, 1990.

See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

Recodified from 10A:71-3.36 by R.1997 d.168, effective April 7, 1997.

See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

Former section recodified to N.J.A.C. 10A:71-3.38.

10A:71-3.38 Purpose of parole hearing; county inmates

(a) In the case of an inmate serving a sentence for an offense committed prior to August 19, 1997, the Board panel shall determine whether evidence supplied in reports or developed or produced at the hearing indicates by a preponderance of the evidence that there is a substantial likelihood that the inmate will commit a crime under the laws of this State if released on parole.

(b) In the case of an inmate serving a sentence for an offense committed on or after August 19, 1997, the Board panel shall determine whether evidence supplied in reports or developed or produced at the hearing indicates by a preponderance of the evidence that the inmate has failed to cooperate in his or her own rehabilitation or that there is a reasonable expectation that the inmate will violate conditions of parole established pursuant to N.J.A.C. 10A:71-6.4(a) if released on parole.

New Rule, R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Recodified from N.J.A.C. 10A:71-3.35, effective March 5, 1990.

See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

Amended by R.1995 d.109, effective February 21, 1995.

See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).

Recodified from 10A:71-3.37 by R.1997 d.168, effective April 7, 1997.

See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

Former section recodified to N.J.A.C. 10A:71-3.39.

Amended by R.1998 d.391, effective August 3, 1998.

See: 30 N.J.R. 1176(a), 30 N.J.R. 2920(a).

In (a), added "In the case of an inmate serving a sentence for an offense committed prior to August 19, 1997," at the beginning; and added (b).

**10A:71-3.39 Factors considered at parole hearings:
county inmates**

(a) Parole decisions shall be based on the aggregate of all pertinent factors including material supplied by the inmate and reports and material which may be submitted by persons or agencies which have knowledge of the inmate.

(b) The hearing officer, Board panel or Board shall consider those factors as specified in N.J.A.C. 10A:71-3.11 and any other factor(s) deemed relevant.

(c) Any detainer shall be noted by the hearing officer, Board panel or Board and shall not be grounds for denial of parole.

New Rule, R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Recodified from N.J.A.C. 10A:71-3.36, effective March 5, 1990.

See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

Recodified from 10A:71-3.38 by R.1997 d.168, effective April 7, 1997.

See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

Former section recodified to N.J.A.C. 10A:71-3.40.

10A:71-3.40 In absentia hearings: county inmates

The provisions of N.J.A.C. 10A:71-3.12 shall be applicable in the cases of county inmates.

New Rule, R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Recodified from N.J.A.C. 10A:71-3.37, effective March 5, 1990.

See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

Recodified from 10A:71-3.39 by R.1997 d.168, effective April 7, 1997.

See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

Former section recodified to N.J.A.C. 10A:71-3.41.

10A:71-3.41 Parole hearing procedures: county inmates

(a) The parole hearing provisions of N.J.A.C. 10A:71-3.13, except subsection (c), shall be applicable in the cases of county inmates.

(b) All information not classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or by the chief executive officer of the institution shall be disclosed to the inmate.

New Rule, R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Recodified from N.J.A.C. 10A:71-3.38, effective March 5, 1990.

See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

Recodified from 10A:71-3.40 by R.1997 d.168, effective April 7, 1997.

See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

Former section recodified to N.J.A.C. 10A:71-3.42.

10A:71-3.42 Scheduling of initial parole hearings; county inmates

(a) The Chairperson shall establish a schedule of parole hearings to be conducted by a hearing officer assigned or designated by the Chairperson.

(b) Except as provided in N.J.A.C. 10A:71-3.51, such hearings shall be conducted at least 21 days in advance of the inmate's parole eligibility date or as soon as administratively feasible.

(c) The Chairperson or designee, when practicable, shall notify the chief executive officer of the institution or designee of the schedule of such hearings at least seven days prior to the hearings.

(d) It shall be the responsibility of the chief executive officer of the institution or designee to immediately notify the Chairperson or designee if any inmate is not expected to be available for a hearing for any reason.

(e) It shall be the responsibility of the chief executive officer of the institution or designee to make arrangements to have any inmate scheduled for a parole hearing brought to the hearing, unless such inmate is physically unable to appear or refuses to appear for the hearing.

(f) It shall be the responsibility of the chief executive officer of the institution or designee to notify the assigned hearing officer in writing of the reason for the failure of an inmate to appear at a scheduled parole hearing.

New Rule, R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Recodified from N.J.A.C. 10A:71-3.39 and amended by R.1990 d.141, effective March 5, 1990.

See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

Internal N.J.A.C. cite changed.

Recodified from 10A:71-3.41 by R.1997 d.168, effective April 7, 1997.

See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

Former section recodified to N.J.A.C. 10A:71-3.43.

Amended by R.1998 d.391, effective August 3, 1998.

See: 30 N.J.R. 1176(a), 30 N.J.R. 2920(a).

In (b), changed N.J.A.C. reference.

10A:71-3.43 Initial hearing notice of decision: county inmates

(a) At the conclusion of the parole hearing, the hearing officer shall:

1. Recommend to a member of the appropriate Board panel that the inmate be released on parole; or
2. Refer the case to the appropriate Board panel for a hearing; or
3. Defer decision for up to 30 days in order to obtain relevant information.

(b) At the time of the hearing, the hearing officer shall issue a written case assessment to the inmate, the chief executive officer of the institution or designee, the Bureau of Parole and the appropriate Board panel.

(c) Such case assessment shall consist of the hearing officer's determination and the reasons therefor, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or by the chief executive officer of the institution.

(d) If the hearing officer recommends that the inmate be released on parole, the hearing officer shall advise the inmate, at the time of the hearing or upon resolution of any deferred decision, of any special conditions recommended.

New Rule, R.1985 d.213, effective May 6, 1985.
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).
Recodified from N.J.A.C. 10A:71-3.40, effective March 5, 1990.
See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).
Recodified from 10A:71-3.42 by R.1997 d.168, effective April 7, 1997.
See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).
Former section recodified to N.J.A.C. 10A:71-3.44.

10A:71-3.44 Board member review: county inmates

(a) When the hearing officer recommends that an inmate be released on parole, the Chairperson shall assign a member of the appropriate Board panel to review such recommendation. In cases of offenders serving sentences for crimes of the first and second degree, such recommendation shall be reviewed by two members of the appropriate Board panel or one Board member of the appropriate panel and one senior hearing officer.

(b) If such Board member(s) or one Board member of the appropriate panel and one senior hearing officer concurs with the recommendation of the hearing officer, the Board member(s) or one Board member and one senior hearing officer shall certify parole release as soon as practicable after the parole eligibility date by:

1. Establishing a specific parole release date as soon after the inmate's actual parole eligibility date as practicable; and
2. Establishing appropriate pre-release conditions; and
3. Establishing appropriate special parole conditions pursuant to N.J.A.C. 10A:71-6; and
4. Issuing a written notice of this action within seven days to the inmate, the chief executive officer of the institution, the Bureau of Parole and the Board.

(c) If such Board member(s) or one Board member of the appropriate panel and one senior hearing officer do not concur with the recommendation of the hearing officer, the Board member(s) or one Board member and one senior hearing officer shall refer the case to the appropriate Board panel for a hearing and issue a written decision to the inmate, the chief executive officer and the Board within

seven days of the decision consisting of the reasons for the referral.

New Rule, R.1985 d.213, effective May 6, 1985.
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).
Recodified from N.J.A.C. 10A:71-3.41, effective March 5, 1990.
See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).
Recodified from 10A:71-3.43 by R.1997 d.168, effective April 7, 1997.
See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).
Former section recodified to N.J.A.C. 10A:71-3.45.

10A:71-3.45 Board panel hearings; scheduling for county inmates

(a) Any case referred to a Board panel by a hearing officer pursuant to N.J.A.C. 10A:71-3.42 or by a Board member(s) or a Board member and a senior hearing officer pursuant to N.J.A.C. 10A:71-3.43 shall be scheduled by the Chairperson for a hearing by the appropriate Board panel.

(b) The Board panel may be composed of any two Board members or any one Board member and one senior hearing officer as necessary for the efficient functioning of the Board.

(c) Except as provided in N.J.A.C. 10A:71-3.51, such hearing shall be conducted at least 14 days in advance of the inmate's parole eligibility date or as soon as administratively feasible.

(d) The Chairperson, when practicable, shall notify the chief executive officer of the institution of the schedule of such hearings at least seven days prior to hearings.

(e) It shall be the responsibility of the chief executive officer of the institution or designee to immediately notify the Chairperson or designee if any inmate scheduled for a hearing is not expected to be available for any reason.

(f) It shall be the responsibility of the chief executive officer of the institution or designee to make arrangements to have any inmate scheduled for a parole hearing brought to the hearing, unless such inmate is physically unable to appear or refuses to appear for the hearing.

(g) It shall be the responsibility of the chief executive officer of the institution or designee to notify the Board panel, in writing, of the reason for the failure of an inmate to appear at a scheduled parole hearing.

(h) At the request of the Chairperson, it shall be the responsibility of the chief executive officer of the institution or designee to transport any inmate to another county correctional facility designated by the Chairperson for a scheduled parole hearing. A request to a chief executive officer or designee to transport an inmate shall only be made to insure the efficient functioning of the Board panel and in no case shall a chief executive officer or designee be requested to transport more than two inmates to another county correctional facility.

New Rule, R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).
 Recodified from N.J.A.C. 10A:71-3.42 and amended by R.1990 d.141,
 effective March 5, 1990.
 See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).
 Internal N.J.A.C. cites changed.
 Recodified from 10A:71-3.44 by R.1997 d.168, effective April 7, 1997.
 See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).
 Former section recodified to N.J.A.C. 10A:71-3.46.
 Amended by R.1998 d.391, effective August 3, 1998.
 See: 30 N.J.R. 1176(a), 30 N.J.R. 2920(a).
 In (c), changed N.J.A.C. reference.

10A:71-3.46 Board panel hearing: notice of decision for county inmates

(a) At the conclusion of the Board panel hearing, the Board panel shall take one of the following actions:

1. Certify parole release as soon as practicable after the parole eligibility date by:
 - i. Establishing a specific parole release date as soon after the inmate's actual parole eligibility date as practicable; and
 - ii. Establishing appropriate pre-release conditions; and
 - iii. Establishing appropriate special parole conditions pursuant to N.J.A.C. 10A:71-6.
2. Deny parole;
3. Defer decision pending receipt of relevant information:
 - i. No such deferral shall extend more than 30 days unless otherwise authorized by the Board.
 - ii. If such additional relevant information is of an adverse nature, then the parole hearing shall be reconvened as soon as possible after receipt of such information.

(b) At the Board panel hearing or within 21 days of the Board panel hearing, the Board panel shall issue a written notice to the inmate, the chief executive officer of the institution, the Bureau of Parole and the Board.

(c) Such notice shall consist of the decision of the Board panel, and, if the Board panel's decision is to deny parole or defer decision, the notice shall contain the reasons therefor, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or by the chief executive officer of the institution.

New Rule, R.1985 d.213, effective May 6, 1985.
 See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).
 Amended by R.1988 d.336, effective July 18, 1988.
 See: 19 N.J.R. 1396(b), 20 N.J.R. 1716(b).
 Deleted (a)4.
 Recodified from N.J.A.C. 10A:71-3.43, effective March 5, 1990.
 See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).
 Recodified from 10A:71-3.45 by R.1997 d.168, effective April 7, 1997.
 See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).
 Former section recodified to N.J.A.C. 10A:71-3.47.

10A:71-3.47 Board panel action: denial of parole

Upon determining to deny parole to a county inmate, the Board panel shall either establish a future parole eligibility date upon which the inmate shall be primarily eligible for parole or direct the inmate to serve the balance of the sentence.

New Rule, R.1985 d.213, effective May 6, 1985.
 See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).
 Recodified from N.J.A.C. 10A:71-3.44, effective March 5, 1990.
 See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).
 Recodified from 10A:71-3.46 by R.1997 d.168, effective April 7, 1997.
 See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).
 Former section recodified to N.J.A.C. 10A:71-3.48.

10A:71-3.48 Victim input

(a) Any victim injured as a result of a crime of the first or second degree or the nearest relative of a murder/manslaughter victim shall be entitled to present a statement for the parole report, filed pursuant to N.J.A.C. 10A:71-3.7, to be considered during the parole hearing process, to present testimony to a senior hearing officer designated by the Board panel, to present testimony to the Board panel, or to present testimony to the Board, if a hearing is conducted pursuant to N.J.A.C. 10A:71-3.19, concerning the victim's harm. Upon the request of a victim or a nearest relative of a murder/manslaughter victim or at the discretion of a Board panel or the Board, a copy of the parole report, except information, documents, reports, records or other written materials deemed confidential pursuant to N.J.A.C. 10A:71-2.1, prepared pursuant to N.J.A.C. 10A:71-3.7 shall be provided to the victim or the nearest relative of a murder/manslaughter victim.

(b) The term "victim" shall mean a person who suffers a personal, physical or psychological injury or death or incurs loss of or injury to personal or real property as a result of a crime of the first or second degree committed against that person, or in the case of murder/manslaughter, the nearest relative of the victim. In the case of a minor, victim shall also mean the minor's parent(s) or guardian.

(c) The term "nearest relative of a murder/manslaughter victim" shall mean a spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half-brother, half-sister and guardian of a minor.

(d) At the time of sentencing, the prosecutor shall notify any victim injured as a result of a crime of the first or second degree or the nearest relative of a murder/manslaughter victim of the opportunity to present a statement for the parole report to be considered during the parole hearing process, to present testimony to a senior hearing officer designated by the Board panel, to present testimony to the Board panel, or to present testimony to the Board, if a hearing is conducted pursuant to N.J.A.C. 10A:71-3.19, concerning the victim's harm.

(e) Each victim or nearest relative of a murder/manslaughter victim shall be responsible for notifying the Board of his or her intent to submit a statement, or to testify, and to provide and keep current an appropriate mailing address.

(f) The statement or testimony of the victim or nearest relative of a murder/manslaughter victim may include the following:

1. The continuing nature and extent of any physical, psychological or emotional harm or trauma suffered;
2. The extent of any loss of earnings or ability to work suffered by the victim; and
3. The continuing effect of the crime upon the victim's family.

(g) At the time public notice is given pursuant to N.J.A.C. 10A:71-3.8, the Board shall notify any victim or nearest relative of a murder/manslaughter victim who has previously contacted the Board of the opportunity to provide a statement for inclusion in the parole report or to present testimony to a senior hearing officer designated by the Board panel, to the Board panel or to the Board, if a hearing is conducted pursuant to N.J.A.C. 10A:71-3.19. The Board shall notify such person at the address of record.

(h) The victim or nearest relative of a murder/manslaughter victim shall notify the Board within 30 days from the date of the notice provided pursuant to (g) above of his or her intent to submit a statement or to testify before a senior hearing officer designated by the Board panel, before the Board panel or before the Board, if a hearing is conducted pursuant to N.J.A.C. 10A:71-3.19. This time period may be waived by the Board for good cause.

(i) Upon the victim or nearest relative of a murder/manslaughter victim submitting a written statement to the Board subsequent to notice being provided pursuant to (g) above, the statement shall be made a part of the Board's file on the inmate and the inmate's case shall be referred to a hearing officer designated to conduct parole release hearings pursuant to N.J.A.C. 10A:71-3.14.

(j) Upon the victim or nearest relative of a murder/manslaughter victim informing the Board subsequent to notice being provided pursuant to (g) above that such person intends to testify before a senior hearing officer designated by the Board panel, the Chairperson shall assign the inmate's case to a senior hearing officer for the purpose of receiving such person's testimony. The case shall be processed as follows:

1. Except as provided in N.J.A.C. 10A:71-3.51, the assigned senior hearing officer shall conduct a hearing within 30 days from the date the Board received notification of the intent to offer testimony.
2. The hearing shall be conducted at a time and place and on a date determined by the Chairperson or designee.

Notice of the time, place and date of the hearing shall be provided to the victim or nearest relative of a murder/manslaughter victim in writing and shall be mailed at least 14 days prior to the hearing date.

3. The hearing shall be recorded by an electronic recording device.

4. The senior hearing officer shall prepare a written report within 14 days of the hearing date. A copy of the report shall be forwarded to the person offering testimony. A copy of the report shall be made a part of the Board's file on the inmate.

5. Upon the completion of the written report, the inmate's case shall be referred to a hearing officer designated to conduct parole release hearings pursuant to N.J.A.C. 10A:71-3.14.

6. The hearing scheduled pursuant to this subsection shall be conducted, when possible, prior to a parole release hearing and prior to the appropriate Board member(s), Board panel or the Board rendering a decision pursuant to N.J.A.C. 10A:71-3.16 and 3.18. However, nothing herein shall be construed to preclude the Board from conducting a timely parole release hearing.

7. During the hearing conducted pursuant to this subsection, only the senior hearing officer, appropriate Board personnel and the victim or nearest relative of a murder/manslaughter victim shall be present in the hearing room. If deemed necessary by the senior hearing officer, a translator may be permitted to assist in the hearing or a family member may be permitted to assist a minor, elderly or infirm victim or nearest relative of a murder/manslaughter victim in the hearing. The senior hearing officer may also permit an individual to be present in the hearing room for the limited purpose of providing emotional support to the victim or nearest relative of a murder/manslaughter victim.

(k) Upon the victim or nearest relative of a murder/manslaughter victim informing the Board subsequent to notice being provided pursuant to (g) above that such person intends to testify before the Board panel, the case shall be processed as follows:

1. Victim input shall be received by the Board panel on the date of the inmate's scheduled hearing before the Board panel and at the designated institution. However, if deemed appropriate by the Board panel, the victim input may be received by the Board panel at a place and on a date other than at the institution in which the inmate is confined and on the date of the inmate's scheduled hearing before the Board panel. If the two Board panel members cannot reach agreement on an alternate place and date, the matter shall be referred to the Chairperson for a final decision.

2. The victim input segment of the Board panel hearing shall be conducted, with the consent of the Department

or Commission, in the administrative area of the institution.

3. Notice of the time, place and date of the Board panel hearing shall be provided to the victim or nearest relative of a murder/manslaughter victim in writing and shall be mailed at least 14 days prior to the hearing date.

4. The victim or nearest relative of a murder/manslaughter victim shall be required to confirm with the Board their appearance before the Board panel seven days prior to the hearing date.

5. Upon confirmation by the victim or nearest relative of a murder/manslaughter victim of their appearance before the Board panel, the Board shall notify the Department or Commission of the identities of the person(s) who will appear before the Board panel on the scheduled hearing date.

6. The Board shall notify the victim or nearest relative of a murder/manslaughter victim that appropriate personal identification is required by the Department or Commission in order to enter the institution.

7. During the victim input segment of the Board panel hearing, the Board panel shall permit the victim or nearest relative of a murder/manslaughter victim a reasonable opportunity to present information relative to the factors outlined in (f) above or any other information relevant to the Board panel's consideration of the inmate's case. The Board panel shall, in recognition of the number of hearings to be conducted on the hearing date, be permitted to establish a reasonable time period(s) for the presentation of information.

8. The victim input segment of the Board panel hearing shall be recorded by an electronic recording device and said recording shall be maintained as part of the Board's file on the inmate's case.

9. If a Board panel hearing is cancelled, the Board panel shall provide immediate notification of the cancellation to the victim or nearest relative of a murder/manslaughter victim. The Board panel shall provide reasonable notice of the time, place and date of the Board panel hearing upon the hearing being rescheduled.

10. In the victim input segment of the Board panel hearing, only the Board members, appropriate Board personnel and victim or nearest relative of a murder/manslaughter victim shall be present in the hearing room. If deemed necessary by the Board panel, a translator may be permitted to assist in the hearing or a family member may be permitted to assist a minor, elderly or infirm victim or nearest relative of a murder/manslaughter victim in the hearing. The Board panel may also permit an individual to be present in the hearing room for the limited purpose of providing emotional support to the victim or nearest relative of a murder/manslaughter victim.

11. If a victim or nearest relative of a murder/manslaughter victim provides notice of their inability to attend the Board panel hearing on the scheduled date, the hearing shall be conducted as scheduled. However, if the hearing on the scheduled date is cancelled, the Board panel shall provide reasonable notice of the time, place and date of the Board panel hearing upon the hearing being rescheduled.

12. Upon the conclusion of the victim input segment of the Board panel hearing, the Board panel shall reconvene the hearing with the inmate present in the hearing room designated by the Department or Commission. In the inmate segment of the Board panel hearing, the victim or nearest relative of a murder/manslaughter victim shall not be present in the hearing room.

(l) If a hearing is conducted pursuant to N.J.A.C. 10A:71-3.19, the Board shall notify the nearest relative of a murder victim, who has previously contacted the Board, of the hearing and shall afford the nearest relative of a murder victim the opportunity to testify in person before the Board or to submit a written statement. If the nearest relative of a murder victim intends to testify before the Board, the case shall be processed as follows:

1. Victim input shall be received by the Board on the date of the inmate's scheduled hearing before the Board and at the designated institution.

2. The victim input segment of the Board hearing shall be conducted, with the consent of the Department or Commission, in the administrative area of the institution.

3. Notice of the time, place and date of the Board hearing shall be provided to the nearest relative of a murder victim in writing and shall be mailed at least 14 days prior to the hearing date.

4. The nearest relative of a murder victim shall be required to confirm with the Board their appearance before the Board seven days prior to the hearing date.

5. Upon confirmation by the nearest relative of a murder victim of their appearance before the Board, the Board shall notify the Department or Commission of the identities of the person(s) who will appear before the Board on the scheduled hearing date.

6. The Board shall notify the nearest relative of a murder victim that appropriate personal identification is required by the Department or Commission in order to enter the institution.

7. During the victim input segment of the Board hearing, the Board shall permit the nearest relative of a murder victim a reasonable opportunity to present information relative to the factors outlined in (f) above or any other information relevant to the Board's consideration of the inmate's case. The Board shall, in recognition of the number of hearings to be conducted on the hearing date, establish a reasonable time period(s) for the presentation of information.

8. The victim input segment of the Board hearing shall be recorded by an electronic recording device and said recording shall be maintained as part of the Board's file on the inmate's case.

9. If a Board hearing is cancelled, the Board shall provide immediate notification of the cancellation to the nearest relative of a murder victim. The Board shall provide reasonable notice of the time, place and date of the Board hearing upon the hearing being rescheduled.

10. In the victim input segment of the Board hearing, only the Board members, appropriate Board personnel and the nearest relative of a murder victim shall be present in the hearing room. If deemed necessary by the Board, a translator may be permitted to assist in the hearing or a family member may be permitted to assist a minor, elderly or infirm nearest relative of a murder victim in the hearing. The Board may also permit an individual to be present in the hearing room for the limited purpose of providing emotional support to the nearest relative of a murder victim.

11. If a nearest relative of a murder victim provides notice of their inability to attend the Board hearing on the scheduled date, the hearing shall be conducted as scheduled. However, if the hearing on the scheduled date is cancelled, the Board shall provide reasonable notice of the time, place and date of the Board hearing upon the hearing being rescheduled.

12. Upon the conclusion of the victim input segment of the Board hearing, the Board shall reconvene the hearing with the inmate present in the hearing room designated by the Department or Commission. In the inmate segment of the Board hearing, the nearest relative of a murder victim shall not be present in the hearing room.

(m) If notice pursuant to (h) above is received subsequent to the conducting of an initial parole hearing but prior to a decision being rendered in the inmate's case, the appropriate Board member(s), Board panel or the Board shall not render a decision in the inmate's case until a written statement is received and made a part of the Board's file on the inmate, a hearing has been conducted pursuant to (j) above and the written report prepared and made a part of the Board's file or a hearing has been conducted pursuant to (k) above. If it is the intent of the victim or the relative of a murder/manslaughter victim to submit a written statement, as evidenced by the notification to the Board pursuant to (h) above, the written statement must be submitted and received by the Board within 30 days of the date of the Board having received the initial notification of intent or the appropriate Board member(s), Board panel or the Board may proceed to render a decision in the inmate's case.

(n) If notice pursuant to (h) above is received subsequent to the rendering of a decision certifying parole release, the appropriate Board member(s), Board panel or the Board shall suspend the parole release date pursuant to N.J.A.C. 10A:71-5.1 pending the receipt of a written statement or the completion of a hearing pursuant to (j) and the submission of a report or a hearing has been conducted pursuant to (k) above. If it is the intent of the victim or the relative of a murder/manslaughter victim to submit a written statement, as evidenced by the notification to the Board pursuant to (h) above, the written statement must be submitted and received by the Board within 30 days of the date of the Board having received the initial notification of intent or the appropriate Board member(s), Board panel or the Board may rescind the suspension of the parole release date.

1. Within 14 days of submission of a written statement, the report of the designated senior hearing officer or the completion of the hearing pursuant to (k) above, the Board member(s), Board panel or Board shall:

- i. Evaluate the information provided;
- ii. Determine whether the decision shall be affirmed or modified;
- iii. Determine whether a rescission hearing shall be conducted pursuant to N.J.A.C. 10A:71-5; and
- iv. Notify the inmate and the Department or Commission in writing of its decision.

(o) Any and all statements or testimony of the victim or nearest relative of a murder/manslaughter victim submitted to the Board pertaining to the continuing nature and extent of any physical harm or psychological or emotional harm or trauma suffered by the victim, the extent of any loss of earnings or ability to work suffered by the victim and the continuing effect of the crime upon the victim's family shall be deemed confidential and shall not be released to the inmate.

(p) The provisions of this section except for public notice required pursuant to N.J.A.C. 10A:71-3.8 and except for testifying before the Board panel and Board shall be applicable to the cases of juvenile and county inmates.

(q) Nothing in this section shall preclude the Board from receiving statements or testimony from any victim injured as a result of a crime of the third or fourth degree or the nearest relative of a victim. However, statements shall be submitted in writing to the Board and testimony shall be received by a designated senior hearing officer pursuant to (j) above.

(r) A victim or the nearest relative of a victim who has submitted a written statement for the parole report or testified at a hearing pursuant to this section shall be notified by the appropriate Board panel or the Board of the final decision rendered in the inmate's case.

New Rule, R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Amended by R.1990 d.141, effective March 5, 1990.

See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

Recodified from N.J.A.C. 10A:71-3.45; changed internal N.J.A.C. cites.

Amended by R.1993 d.410, effective August 16, 1993.

See: 25 N.J.R. 4483(a), 25 N.J.R. 3826(b).

Amended by R.1994 d.180, effective April 4, 1994.

See: 25 N.J.R. 4705(a), 26 N.J.R. 1507(a).

Amended by R.1995 d.109, effective February 21, 1995.

See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).

Recodified from 10A:71-3.47 and amended by R.1997 d.168, effective April 7, 1997.

See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (k)2, 5, 6, and 12, (l)2, 5, 6, and 12, and (n)iv, inserted reference to Commission. Former section recodified to N.J.A.C. 10A:71-3.49.

Amended by R.1998 d.391, effective August 3, 1998.

See: 30 N.J.R. 1176(a), 30 N.J.R. 2920(a).

In (j)1, changed N.J.A.C. reference.

10A:71-3.49 Informational hearing

(a) Upon public notice of an inmate's parole eligibility being issued pursuant to N.J.A.C. 10A:71-3.8, the Attorney General, the appropriate county prosecutor, any other criminal justice agency and any interested party whose information and comment may be relevant as to the necessity or desirability of an inmate's parole shall be permitted, upon their application to the Chairperson or designee, to submit to the appropriate panel or the Board evidence, to give testimony, examine and cross-examine witnesses and present such other information on all matters directly relevant to the parole of an inmate.

(b) The application shall be submitted to the Chairperson or designee in writing and shall include a description of the nature and type of evidence or testimony to be presented. A list of potential witnesses and a statement as to the relevancy of their testimony to the issue of parole must be submitted to the Chairperson or designee as part of the application or prior to the date of the hearing scheduled pursuant to this section.

(c) Upon receipt of the application, the Chairperson or designee shall assign the case to a hearing officer for the conducting of a hearing.

(d) A designated representative shall notify the inmate in writing that a hearing will be scheduled for the purpose of receiving information relevant to his parole release. The inmate shall be informed of the identity of the agency or interested party requesting the hearing.

(e) Except as provided in N.J.A.C. 10A:71-3.51, the assigned hearing officer shall conduct the hearing within 30 days from the date the Chairperson or designee received the application submitted pursuant to (a) above.

(f) The hearing shall be conducted at a time and place and on a date determined by the Chairperson or designee. Primary consideration shall be given to the conducting of the hearing within the county most convenient for the majority of the parties concerned.

(g) A designated representative shall provide notification of the time, date and location of the hearing to all interested parties and the inmate. The notice shall be in writing and shall be mailed no later than 15 days prior to the date of the hearing.

(h) The hearing shall be informal and non-adversarial in nature. The hearing officer shall have the authority to exclude from participation in the hearing any person who attempts to use the hearing as a forum for public commentary or as a public contest or whose participation becomes more adversarial than informative in nature.

(i) Prior to any person offering testimony the hearing officer shall advise the person of the following:

1. That his testimony will be summarized in a written report;
2. That the person will receive a copy of that portion of the report summarizing his statement; and
3. That the inmate will receive a copy of the summarized statement unless the hearing officer determines that the release of the information would endanger the safety of the person.
4. The Board on its own motion may for good cause identify all or part of the testimony summarized in the written report as confidential.

(j) The admissibility of any statement, document or information shall not be governed by the statutory or judicial rules of evidence of this State. Any statement, document, or information relevant to the issue of the inmate's suitability for parole may be received as evidence. The hearing officer is authorized to exclude any statement, document or information not relevant to the issue of the inmate's suitability for parole.

(k) Upon the completion of the hearing, which shall be recorded by an electronic recording device, the hearing officer shall prepare a written report within 14 days of the hearing date. The report shall summarize the information, testimony and documentation admitted at the hearing. A copy of the complete summary report shall be forwarded to the agency or interested party originally requesting the conducting of a hearing and to the inmate and/or counsel. A copy of the summary of each of the witnesses' testimony shall be forwarded to each witness. A complete summary report shall be made a part of the appropriate Board panel's or Board's file on the inmate.

6. The right to waive such hearing.

7. The right to disclosure of adverse information except as provided in N.J.A.C. 10A:71-2.1 or the rules and regulations of the Department or Commission.

(c) When a rescission hearing is conducted pursuant to N.J.A.C. 10A:71-3.48(n)1iii, any and all statements or testimony of the victim or nearest relative of a murder/ma-slaughter victim submitted to the Board pursuant to N.J.A.C. 10A:71-3.48 and the identity of the person submitting such statements or testimony shall be deemed confidential and shall not be released to the inmate. Further, confrontation and cross-examination of the person providing statements or testimony to the Board pursuant to N.J.A.C. 10A:71-3.48 shall not be permitted.

Amended by R.1985 d.213, effective May 6, 1985.
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Subsection (a) deleted; old (b)-(c) recodified to (a)-(b).
Amended by R.1997 d.168, effective April 7, 1997.
See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (a) and (b)8, inserted reference to Commission.
Amended by R.1999 d.252, effective August 2, 1999.
See: 31 N.J.R. 1140(a), 31 N.J.R. 2218(a).

In (b), deleted a former 2, and recodified former 3 through 8 as 2 through 7; and added (c).

Case Notes

"Residuum evidence rule" inapplicable to Parole Board decisions (citing N.J.A.C. 10A:71-2.1, 10A:71-3.7, 10A:71-3.46); delay in scheduling parole hearing did not violate appellant's due process rights warranting reversal on that ground; when parole rescission decision is based on expert opinion concerning wiretapped conversations said to show criminal activity not presented through tapes or transcripts or both, testifying officer should accurately recount them. *Gerardo v. N.J. State Parole Bd.*, 221 N.J.Super. 442, 534 A.2d 1037 (App.Div.1987).

Right of confrontation at parole release date rescission hearing is at the discretion of prison officials; prisoner's due process rights not infringed upon by either confrontation refusal or failure to reply in writing to confrontation request (citing former N.J.A.C. 10:70-5.1). *O'Neal v. New Jersey State Parole Bd.*, 149 N.J.Super. 174, 373 A.2d 446 (Ch.Div.1977).

10A:71-5.8 Parole rescission hearing; notice of decision

(a) The Board panel or hearing officer shall record the rescission hearing by an electronic recording device. If the electronic recording device is not operational the hearing shall proceed only upon the inmate waiving the electronic recording of the hearing. The waiver shall be in writing and signed by the inmate and shall be made a part of the inmate's records. If the inmate does not wish to proceed without the electronic recording of the hearing, the hearing shall be rescheduled within 14 days.

(b) If the rescission hearing is conducted by a hearing officer, the hearing officer shall prepare a written summary of the rescission hearing.

1. Such hearing summary shall be forwarded to the appropriate Board panel, and a copy of the summary shall be forwarded to the inmate's attorney or directly to the inmate where he or she has appeared pro se, in order that

the inmate or his or her attorney may object or comment on the hearing summary by submitting written exceptions to the hearing summary. Such exceptions shall be forwarded to the Board panel within 14 days after the receipt of the hearing summary. The provisions of N.J.A.C. 10A:71-2.1 shall be applicable to any hearing summary provided to the inmate.

2. Within 14 days after the receipt of the hearing summary and the written exceptions thereto, the Board panel shall render a final decision as to rescission of parole.

3. The Board panel members shall not receive or consider any ex parte communications. The inmate's case shall be decided on the basis of the established record.

(c) The Board panel shall notify the inmate and the Department or Commission in writing of its decision as to rescission of parole within 21 days after the disposition of the case.

(d) If the Board panel rescinds parole, the written decision shall include in the case of an adult or young adult inmate any future parole eligibility date established pursuant to N.J.A.C. 10A:71-3.21.

Amended by R.1990 d.141, effective March 5, 1990.
See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

Cite change at (d).
Amended by R.1995 d.109, effective February 21, 1995.
See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).
Amended by R.1997 d.168, effective April 7, 1997.
See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (c), inserted reference to Commission; and in (d), inserted "in the case of an adult or young adult inmate".

SUBCHAPTER 6. SUPERVISION

10A:71-6.1 Administration

(a) Except as otherwise provided pursuant to the Interstate Parole Compact (N.J.S.A. 2A:168-14 et seq.), the Interstate Compact on Juveniles (N.J.S.A. 9:23-1 et seq.) or the Witness Security Reform Act (18 U.S.C. §§ 3251 et seq.), all adult parolees shall at all times be under the supervision of the Bureau of Parole and all juvenile parolees shall at all times be under the supervision of the Commission.

(b) Supervision shall continue until the expiration of the maximum sentence or sentences subject, however, to earlier discharge from parole in accordance with the provisions of N.J.A.C. 10A:71-6.9.

(c) In the case of a juvenile, supervision shall also continue during the term of post incarceration imposed pursuant to N.J.S.A. 2A:4A-44(d)5 unless the juvenile Board panel determines that post incarceration supervision should be

revoked and the juvenile returned to custody pursuant to the provisions of N.J.S.A. 30:4-123.59 to 30:4-123.65 and N.J.A.C. 10A:71-7.

Amended by R.1985 d.213, effective May 6, 1985.
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Deleted the text "and payment of any fine".
Amended by R.1997 d.168, effective April 7, 1997.
See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (a), amended N.J.S.A. references, inserted reference to Witness Security Reform Act, inserted "adult" preceding "parolees", and added provision relating to supervision of juvenile parolees; and added (c).

10A:71-6.2 Supervisory procedures

(a) The Board or the appropriate Board panel may require specific procedures to be followed in the supervision of individual parolees. Notice of such procedures shall be provided in writing to the appropriate supervisory personnel.

(b) It shall be the responsibility of the appropriate supervisory personnel to provide promptly and fully such information as herein required and such information as the Board or its representative may request on individual cases.

10A:71-6.3 Certificate of parole

(a) Prior to release on parole, the Board shall issue a written certificate of parole which shall be delivered to and signed by each inmate.

(b) Such certificate of parole shall include all general and special conditions of parole imposed prior to release.

(c) Responsibility for the delivery of the certificates of parole shall rest with the Director of Parole, a designated representative of the Board, or a designated representative of the Commission, as appropriate.

(d) At the time of such delivery, all parole conditions shall be explained to the inmate.

(e) The Board shall provide a translation of the certificate of parole to any inmate whose primary language is other than English who requests such a translation in writing to the Board.

(f) Before being released on parole, each inmate shall be required to agree to abide by the conditions of his or her parole as evidenced by his or her signature affixed to the certificate of parole.

(g) If the inmate refuses to sign the certificate of parole, the parole release date shall be suspended pursuant to N.J.A.C. 10A:71-5.1.

Amended by R.1985 d.213, effective May 6, 1985.
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Deleted text " , the Chief of the Bureau of Interstate Services".
Amended by R.1990 d.141, effective March 5, 1990.
See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

Deleted requirement in (b) that certificate be signed by Board member or members.

Amended by R.1997 d.168, effective April 7, 1997.

See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (c), inserted reference to a designated representative of the Commission.

Amended by R.2000 d.50, effective February 7, 2000.

See: 31 N.J.R. 3579(a), 32 N.J.R. 472(b).

In (c), substituted a reference to the Director of Parole for a reference to the Chief of the Bureau of Parole.

Case Notes

Requirement to make reparations not permitted as a condition of parole; restitution only is allowed by statute; prisoner not entitled to release pending Parole Board's appeal of Superior Court ruling striking down reparations requirement for parole. In re Trantino Parole Application, 177 N.J.Super. 499, 427 A.2d 91 (App.Div.1981), modified and remanded 89 N.J. 347, 446 A.2d 104 (1982).

10A:71-6.4 Conditions of parole

(a) The certificate of parole shall contain the following general conditions of parole:

1. You are required to obey all laws and ordinances.

2. You are to report in person to your District Parole Supervisor or his or her designated representative, or the designated representative of the Commission, immediately after you are released on parole from the institution, unless you have been given other written instructions by a designated representative of the Board, Bureau of Parole or Commission, and you are to report thereafter as instructed by the District Parole Supervisor or his or her designated representative, or the designated representative of the Commission.

3. You are to notify your parole officer immediately after any arrest, immediately after your being served with or receiving a complaint or summons and after accepting any pre-trial release including bail.

4. You are to immediately notify your parole officer upon the issuance by the appropriate court, pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., of an order granting emergency relief, a temporary or final restraining order or an order establishing conditions of release or bail in a criminal matter or offense arising out of a domestic violence situation. You are to comply with any condition established within the respective order until the order is dissolved by the appropriate court or until a condition is modified or discharged by the appropriate court.

5. You are to obtain approval of your parole officer:

i. For any change in your residence or employment location.

ii. Before leaving the state of your approved residence.

6. You are not to own or possess any firearm, as defined in N.J.S.A. 2C:39-1f, for any purpose.

7. You are not to own or possess any weapon enumerated in N.J.S.A. 2C:39-1r.

8. You are to refrain from the use, possession or distribution of a controlled dangerous substance, controlled substance analog or imitation controlled dangerous substance as defined in N.J.S.A. 2C:35-2 and N.J.S.A. 2C:35-11.

9. You are required to make payment to the Bureau of Parole or Commission, as appropriate, of any assessment, fine, penalty, lab fee or restitution imposed by the sentencing court.

10. You are to register with the appropriate law enforcement agency and, upon a change of address, re-register with the appropriate law enforcement agency if you are subject to the provisions of N.J.S.A. 2C:7-2.

11. You are to refrain from behavior which results in the issuance of a final restraining order pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq.

12. You are to waive extradition to the State of New Jersey from any jurisdiction in which you are apprehended and detained for violation of this parole status and you are not to contest any effort by any jurisdiction to return you to the State of New Jersey.

(b) In the case of an adult or young adult state inmate subject to the provisions of N.J.S.A. 2C:43-6.4, the certificate of parole shall contain as general conditions of parole, in addition to those conditions specified in (a) above, the conditions as specified in N.J.A.C. 10A:71-6.11(b), (c), (e), (f) and (g) as appropriate.

(c) In the case of juvenile inmates, the certificate of parole shall contain the following general condition of parole, in addition to those conditions contained in (a) above.

1. You are required to attend school on a full-time basis if you are under 16 years of age.

(d) In the case of a county inmate, the performance of public service for the remainder of the term of the sentence shall be a required condition of parole where appropriate. The Chairperson shall be authorized to pursue a contract for services for the supervision by the appropriate county probation department for the performance of public service by county inmates.

(e) Based on the prior history of the inmate or information provided by a victim or a member of the family of a murder victim, the Board members certifying parole release may impose any other specific conditions of parole deemed reasonable in order to reduce the likelihood of recurrence of criminal or delinquent behavior. In addition, the Board members certifying parole release may, giving due regard to a victim's request, impose a special condition that the parolee have no contact with the victim, which special condition may include, but need not be limited to, restraining the parolee from entering the victim's residence, place

of employment, business or school, and from harassing or stalking the victim or victim's relatives in any way.

(f) The Board members certifying parole release may, in the following circumstances, impose as a specific condition of parole that the parolee notify an employer or intended employer of his or her parole status and criminal record:

1. The employment is a "live-in" position, for example, employment and residence are on the property of the employer;

2. The parolee is serving a sentence for the offense of murder, manslaughter, kidnapping, aggravated sexual assault, sexual assault, aggravated criminal sexual contact, robbery first degree, robbery second degree, endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of a child, luring, aggravated assault, arson or an attempt to commit any such offense;

3. The criminal record of the parolee indicates a conflict with the type of employment; or

4. The employment violates the terms of a New Jersey or Federal licensing law or license applicable to the employer.

(g) The assigned parole officer shall confirm that the notification required by the specific condition under (f) above has been made to the employer and is authorized to make the appropriate notification if the parolee fails to do so.

(h) Nothing in this section shall prohibit the Board members from imposing as a specific condition of parole that the parolee notify an employer or intended employer of his or her parole status and criminal record where good cause exists to impose such a specific condition.

(i) Additional special conditions may be imposed by the District Parole Supervisor, an Assistant District Parole Supervisor, the designated representative of the District Parole Supervisor or the designated representative of the Commission when, in the opinion of the District Parole Supervisor, an Assistant District Parole Supervisor, the designated representative of the District Parole Supervisor, or the designated representative of the Commission, such conditions would reduce the likelihood of recurrence of criminal or delinquent behavior.

1. The parolee shall be given written notice immediately upon the imposition of such an additional special condition.

2. The Board shall be given written notice within seven days upon the imposition of such an additional special condition.

3. An additional special condition imposed shall be deemed to be effective on the date of imposition.

4. Upon notice being received by the Board, the appropriate Board panel or the Board shall review the parolee's case and determine whether to vacate, modify or affirm the additional special condition(s).

5. The Board panel or the Board shall notify the District Parole Supervisor or the designated representative of the Commission of its determination within 30 days of receipt of notice of the imposition of the additional special condition. Failure by the Board panel or the Board to notify the District Parole Supervisor or the designated representative of the Commission of its determination within 30 days of receipt of notice of the imposition of the additional special condition shall result in the vacating of the special condition.

6. The District Parole Supervisor or the designated representative of the Commission shall notify the parolee in writing of the determination of the Board panel or Board and shall cause a written record of such notice to be made in the parolee's case file.

(j) A District Parole Supervisor, an Assistant District Parole Supervisor, the designated representative of the District Parole Supervisor or the designated representative of the Commission may, under the circumstances specified in (f) above, impose as a special condition that the parolee notify an employer or intended employer of his or her parole status and criminal record. Imposition of the special condition shall be in accordance with the provisions of (i) above. However, the special condition shall not be deemed effective until affirmed by the appropriate Board panel. If the appropriate Board panel is advised that the circumstances of the parolee's case require emergent review, the appropriate Board panel shall review the parolee's case within three working days of receipt of the notice of imposition of the special condition and inform the appropriate party immediately of its determination.

(k) If a parolee owes an assessment, fine, penalty, lab fee or restitution, the District Parole Supervisor or the designated representative of the Commission, as appropriate, shall, unless otherwise ordered by the Board or members certifying parole release or the sentencing court, be responsible for specifying a reasonable schedule for payment of such assessment, fine, penalty, lab fee or restitution.

(l) In the case of an adult or young adult state inmate released on parole with the special condition that the inmate participate in one of the Department's alternative sanctions programs or the aftercare component of the Department's stabilization and reintegration program, the general conditions of the respective program shall be deemed to be special conditions of parole and shall remain in effect until the parolee is discharged from the respective program.

Amended by R.1985 d.213, effective May 6, 1985.
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).
Amended by R.1989 d.145 effective March 20, 1989.
See: 20 N.J.R. 2747(b), 21 N.J.R. 768(a).

At (e), "Assistant District Parole Supervisor" and "designated representative of District Parole Supervisor" added to those who may impose special conditions.

Amended by R.1993 d.398, effective August 16, 1993.
See: 25 N.J.R. 435(a), 25 N.J.R. 3829(a).
Amended by R.1995 d.109, effective February 21, 1995.
See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).
Amended by R.1995 d.614, effective December 4, 1995.
See: 27 N.J.R. 3274(b), 27 N.J.R. 4891(a).
Amended by R.1997 d.168, effective April 7, 1997.
See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (a)2, inserted references to designated representative of the Commission and substituted "a designated representative of the Board, Bureau of Parole or Commission" for "the Institutional Parole Officer"; in (a)3, inserted provision relating to a complaint or summons; in (a)9, inserted reference to Commission; in (e), (e)2, (e)3, and (f), inserted references to designated representative of the Commission. Amended by R.1998 d.144, effective March 16, 1998.
See: 29 N.J.R. 4243(a), 30 N.J.R. 1044(a).

Inserted a new (b); and recodified former (b) through (f) as (c) through (g).

Administrative correction.
See: 30 N.J.R. 1286(a).
Amended by R.1998 d.391, effective August 3, 1998.
See: 30 N.J.R. 1176(a), 30 N.J.R. 2920(a).

In (a), added 10; and rewrote (e).
Amended by R.1999 d.189, effective June 7, 1999.
See: 31 N.J.R. 710(a), 31 N.J.R. 1490(a).

In (a), added 11 and 12; inserted new (f) through (h); recodified former (f) as (i); inserted (j); and recodified former (g) as (k). Amended by R.1999 d.252, effective August 2, 1999.
See: 31 N.J.R. 1140(a), 31 N.J.R. 2218(a).

Rewrote (i); and added (l).
Administrative correction.
See: 31 N.J.R. 2755(b).
Amended by R.2000 d.50, effective February 7, 2000.
See: 31 N.J.R. 3579(a), 32 N.J.R. 472(b).

In (f)2, inserted references to kidnapping, robbery first degree and robbery second degree.

Cross References

Board penal actions for failure to report, see N.J.A.C. 10A:71-7.16B.

10A:71-6.5 Restitution

(a) If the Board members certifying parole release establish a special condition requiring full or partial restitution, the Board shall immediately request that the sentencing court set the amount of such restitution.

(b) The Board shall identify for the sentencing court the elements or factors to be considered in computing the amount of restitution and specify to the court the manner in which the following factors are to be applied.

1. Limitation of restriction to actual loss or damage caused by the crime. Damage may be limited to medical expenses and related costs, funeral expenses, specific personal property losses, other losses if clearly provable, and lost wages for limited periods of time which do not involve assessments of life expectancy.

2. Restitution is to be made to the persons most directly affected by the parolee's criminal acts.

3. Restitution must be related to the parolee's ability to pay and should not exceed an amount which would jeopardize its rehabilitative purpose.

4. Restitution must be directly related to the losses occurring as a result of the criminal act and to the attitude of the offender.

(c) Upon being notified by the sentencing court as to amount of restitution set, the Board shall notify the inmate, or, if released on parole, the parolee and the District Parole Supervisor or the designated representative of the Commission of the amount of restitution.

Amended by R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

New (b) added; old (b) recodified to (c).

Amended by R.1997 d.168, effective April 7, 1997.

See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (c), inserted reference to designated representative of the Commission.

10A:71-6.6 Modification of conditions

(a) The certifying Board members or appropriate Board panel may modify a parolee's conditions of parole at any time for cause.

(b) Except as provided in N.J.A.C. 10A:71-6.4(e), a parolee or the parolee's parole officer may apply to the appropriate Board panel at any time for modification of the conditions of parole.

(c) Such application shall be submitted by the District Parole Supervisor or the designated representative of the Commission at the request of either the parolee or the parolee's parole officer and shall contain the recommendation of the officer and the District Parole Supervisor or the designated representative of the Commission, as appropriate, accompanied by supporting documentation.

(d) If the application is not submitted at the parolee's request, the parolee shall be notified in writing of the proposed modification prior to submission of the application to the Board panel.

(e) The parolee may submit written comments regarding the application to the Board panel; however, such comments must be received within 15 days of the application.

(f) The Board panel shall consider such application and notify the District Parole Supervisor or the designated representative of the Commission, as appropriate, in writing of the decision within 45 days of the receipt of the application.

(g) The District Parole Supervisor or the designated representative of the Commission, as appropriate, shall notify the parolee in writing of any modification of the conditions of parole and shall cause a written record of such modification to be made in the parolee's case file.

Amended by R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Cross reference changed from (d) to (e).

Amended by R.1995 d.109, effective February 21, 1995.

See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).

Amended by R.1997 d.168, effective April 7, 1997.

See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (c), (f), and (g), inserted reference to designated representative of the Commission; and in (c), inserted "District Parole" preceding "Supervisor".

10A:71-6.7 Adjustment hearings; State prison parolees

(a) If the parole officer has probable cause to believe that a State prison parolee has violated a condition of parole, such violation not being a basis for revocation of parole pursuant to N.J.A.C. 10A:71-7, the parole officer may require that the parolee appear before a hearing officer for a review of the parolee's adjustment.

(b) Such adjustment hearings shall be conducted by a hearing officer appointed by the Director of Parole.

1. The hearing officer shall be an impartial official and may not be directly involved in supervision of the parolee.

2. Such appointment shall be made by that authority of the Chairperson, and shall in no way limit or otherwise alter the authority of the Chairperson to designate or appoint a hearing officer for adjustment hearings in cases where the Chairperson deems such action appropriate.

(c) At least 14 days prior to the adjustment hearing, the parolee shall be notified in writing as to the time, date, and place of the adjustment hearing; the violation(s) of parole condition(s) alleged; the purpose of the hearing; the possible action which may be taken as a result of the adjustment hearing; and the following rights to which the parolee shall be entitled at the adjustment hearing:

1. The right to appear and speak in his or her own behalf.

2. The right to remain silent.

3. The right to present witnesses to testify in his or her own behalf as to matters relevant to the alleged violation(s) of parole.

4. The right to confront and cross-examine adverse witnesses, unless the hearing officer determines that such witnesses would be subjected to risk or harm.

5. The right to present documentary evidence and any other relevant material or information.

6. The right to waive such hearing.

7. The right to request postponement of such hearing for a period of not more than 14 days.

(d) If the hearing officer determines at the adjustment hearing that the parolee has violated a condition of parole, the hearing officer may order the forfeiture of up to 365 days of commutation time credits granted on the parolee's maximum sentence(s) pursuant to N.J.S.A. 30:4-140.

(e) If the hearing officer orders any such forfeiture of commutation time credits, he or she shall file a notice of such action with the parolee, the Board and the Department

within 21 days of the hearing. Such notice shall contain the procedures available to the parolee for appeal of the forfeiture.

(f) Any forfeiture of commutation time credits shall be appealable to the prison Board panel provided one of the following criteria is met:

1. The hearing officer failed to establish a violation of a parole condition.
2. The forfeiture of commutation time credits is unduly harsh or severe.

As amended, R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Deleted "or the Chief of the Bureau of Interstate Services"; substituted "Chairperson" for "Board".

Amended by R.2000 d.50, effective February 7, 2000.

See: 31 N.J.R. 3579(a), 32 N.J.R. 472(b).

In (b), substituted a reference to the Director of Parole for a reference to the Chief of the Bureau of Parole in the introductory paragraph.

10A:71-6.8 Forfeiture of commutation time credits

(a) If the preliminary hearing officer pursuant to N.J.A.C. 10A:71-7.4 or the adult Board panel pursuant to N.J.A.C. 10A:71-7.12 determines that a State prison parolee has violated a condition of parole but that such violation is not serious or persistent or that revocation of parole is not desirable, the hearing officer or Board panel may order the forfeiture of up to 365 days of commutation time credits.

(b) Any such action by the preliminary hearing officer shall be appealable to the adult Board panel pursuant to the provisions of N.J.A.C. 10A:71-6.7(f).

Amended by R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Substituted "adult" for "person".

10A:71-6.9 Discharge from parole

(a) The appropriate Board panel may grant any parolee a complete discharge from parole prior to the expiration of the maximum term for which he or she was sentenced, provided that:

1. Such parolee has made a satisfactory adjustment while on parole; and
2. Continued supervision is not required;
3. The parolee has made full payment of any assessment, fine, penalty, lab fee or restitution or the parolee has in good faith established a satisfactory payment schedule; or
4. In the opinion of the Board panel continued supervision is not warranted or appropriate based upon a review of the facts and circumstances considered pursuant to N.J.A.C. 10A:71-7.10, 7.11, 7.12, 7.16 and 7.17, 7.17A or 7.17B.

(b) The Board panel will consider requests for discharge after the following periods of parole supervision have been completed:

1. In the case of adult parolees serving life sentences, after a period of seven years provided the parolee has been under annual supervision status for the final two years.

2. Except as provided above, in the case of juvenile parolees for murder and manslaughter and in the case of adult parolees serving sentences for murder, manslaughter, kidnapping, aggravated sexual assault (including attempts), robbery first degree, arson, aggravated assault second degree, and sale or distribution or sale of controlled dangerous substance and possession of controlled dangerous substance with intent to distribute, after a period of two years provided the parolee is under advanced supervision status.

3. In the case of county parole absconders, after a period of two years from the expiration date of the original maximum sentence, provided the parolee has no known arrests.

4. In the case of juvenile and young adult parole absconders, after a period of three years from the date the parolee became an absconder, provided the parolee has no known arrests and provided the original maximum sentence has expired.

5. In the case of adult parole absconders, after a period of 10 years from the date the parolee became an absconder or after a period of five years from the expiration of the original maximum sentence, provided the parolee has no known arrests.

6. In all other cases, after a period of one year.

(c) The provisions of (a) and (b) above shall not preclude the appropriate Board panel from granting a juvenile or county parolee a complete discharge from parole prior to the expiration of the maximum term for which he or she was sentenced when the appropriate Board panel determines that good cause exists to grant such a discharge.

(d) If the District Parole Supervisor or the designated representative of the Commission, as appropriate, determines that a parolee has made exceptional progress while on parole supervision, the District Parole Supervisor or the designated representative of the Commission, as appropriate, may request that a waiver of the time periods above be granted by the appropriate Board panel. Such waiver may be granted by the appropriate Board panel for good cause.

(e) When a parolee has completed two years of parole supervision and thereafter on an annual basis, the parole officer and the District Parole Supervisor or the designated representative of the Commission, as appropriate, shall review the case to determine whether good reason exists to require continued supervision.

1. If the District Parole Supervisor or the designated representative of the Commission, as appropriate, determines at such review that good reason exists to require continued supervision, and unfavorable discharge determination shall be made, and a statement setting forth such determination and the reasons therefor shall be entered on the chronological supervision report.

2. If the District Parole Supervisor or the designated representative of the Commission, as appropriate, determines that good reason does not exist to require continued supervision and that the parolee qualifies for discharge pursuant to (a) above, a favorable discharge recommendation shall be submitted to the appropriate Board panel.

3. The appropriate Board panel shall review requests for discharge and advise the District Parole Supervisor or the designated representative of the Commission, as appropriate, of its decision within 45 days of receipt of the recommendation.

(f) The appropriate Board panel may provide a discharge from continued parole supervision:

1. In the case of a parolee who has received a non-custodial term for the commission of an offense and the parolee is to be under community supervision through a probation or parole agency in another jurisdiction; or

2. The parolee has clearly established that continued parole supervision under a community plan in this State or consideration of a formal transfer of supervision to another state would not be conducive to the timely continuation of the parolee's community reintegration.

(g) If discharge is granted, the appropriate Board panel shall issue a discharge certificate on the parolee.

(h) A term of post-incarceration supervision imposed pursuant to N.J.S.A. 2A:4A-44(d)5 may be terminated by the juvenile Board panel if the juvenile has made a satisfactory adjustment in the community while on parole or under such supervision, if continued supervision is not required and if the juvenile has made full payment of any fine or restitution.

As amended, R.1981 d.324, effective September 10, 1981.

See: 13 N.J.R. 440(a), 13 N.J.R. 598(a).

New (b) and (c) added; old (b) and (c) renumbered as (d) and (e).

As amended, R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Section substantially amended.

Amended by R.1988 d.336, effective July 18, 1988.

See: 19 N.J.R. 1396(b), 20 N.J.R. 1716(b).

Added (b)3; renumbered old (b)3-5 as 4-6.

Amended by R.1995 d.109, effective February 21, 1995.

See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).

Amended by R.1997 d.168, effective April 7, 1997.

See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (a)4, inserted additional N.J.A.C. reference; in (c) and (d), inserted references to designated representative of the Commission; and added (g).

Amended by R.1999 d.252, effective August 2, 1999.

See: 31 N.J.R. 1140(a), 31 N.J.R. 2218(a).

In (a)4, changed N.J.A.C. references.

Amended by R.2000 d.50, effective February 7, 2000.

See: 31 N.J.R. 3579(a), 32 N.J.R. 472(b).

Inserted a new (c); and recodified former (c) through (g) as (d) through (h).

10A:71-6.10 Transfer of parole supervision to out-of-State jurisdiction

(a) The appropriate Board panel may permit a parolee to reside outside the State pursuant to the provisions of the uniform act for out-of-State parolee supervision (N.J.S.A. 2A:168-14 et seq.) and the interstate compact on juveniles (N.J.S.A. 9:23-1 et seq.) if the Board panel is satisfied that such change will not result in a substantial likelihood that the parolee will commit an offense which would be a crime under the laws of this State.

(b) If a parolee seeks to transfer formal supervision of his or her case to another jurisdiction, the parolee shall notify his or her parole officer and complete the documents required by statutory or regulatory provisions.

(c) The District Parole Office or the designated representative of the Commission, as appropriate, shall forward to the Board the completed required documents, a copy of an up-to-date chronological supervision report on the parolee's case, an assessment of the parolee's community adjustment, a copy of the parole certificate and a copy of any other document deemed relevant to the parolee's case.

(d) Upon receipt of the material submitted pursuant to (c) above, the appropriate Board panel shall review the parolee's case and determine whether the parolee is a suitable candidate for the transfer of parole supervision to the designated out-of-State jurisdiction.

(e) If the Board panel determines that transfer of the supervision of the parolee's case to an out-of-State jurisdiction is appropriate, the Board panel shall submit the case materials to the Department's Office of Interstate Services or the Commission, as appropriate. The Office of Interstate Services or the Commission, as appropriate, pursuant to the relevant statutory and regulatory provisions, shall forward the parolee's request for transfer of parole supervision to the designated out-of-State jurisdiction for investigation.

(f) Upon the Board panel receiving the completed community investigation by the out-of-State jurisdiction, the Board panel shall review the community plan approved by the out-of-State jurisdiction. If the community plan is deemed acceptable by the Board panel, the Board panel shall notify in writing the Office of Interstate Services or the Commission, as appropriate, and the District Parole Office or the designated representative of the Commission, as appropriate, that supervision of the parolee's case may be transferred to the out-of-State jurisdiction. The Office of Interstate Services or the Commission, and/or the District Parole Office or the designated representative of the Com-

mission, as appropriate, shall notify the parolee of the Board panel's decision and issue the necessary travel documents.

(g) The Board panel shall not authorize the transfer of parole supervision to an out-of-State jurisdiction when:

1. The out-of-State jurisdiction has determined not to accept supervision of the parolee's case; or
2. The parole plan approved by the out-of-State jurisdiction is substantially different from the original parole plan submitted and reviewed by the Board panel and the alternate parole plan is not deemed appropriate by the Board panel.

(h) If the Board panel upon reviewing the parolee's case pursuant to (d), (f) or (g) above determines to deny authorization for the transfer of the parolee's case to an out-of-State jurisdiction, the Board panel shall notify in writing the Office of Interstate Services or the Commission, as appropriate, and the District Parole Office or the designated representative of the Commission, as appropriate, of the determination. The District Parole Office or the designated representative of the Commission, as appropriate, shall notify the parolee of the determination of the Board panel.

New Rule, R.1995 d.109, effective February 21, 1995.

See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).

Amended by R.1997 d.168, effective April 7, 1997.

See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (c), (e), (f), and (h), inserted references to Commission or to a designated representative of the Commission.

10A:71-6.11 Community supervision for life

(a) Pursuant to N.J.S.A. 2C:43-6.4(a), a court imposing sentence on a person who has been convicted of aggravated sexual assault, sexual assault, aggravated criminal sexual contact, kidnapping pursuant to N.J.S.A. 2C:13-1(c)2, endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of a child pursuant to N.J.S.A. 2C:24-4(a), luring or an attempt to commit any such offense shall include, in addition to any sentence authorized by the Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq., a special sentence of community supervision for life.

(b) The special sentence of community supervision for life shall commence pursuant to N.J.S.A. 2C:43-6.4(b) upon the completion of the sentence imposed pursuant to the Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq. An offender serving a special sentence of community supervision for life shall be supervised by the Bureau of Parole as if on parole and subject to any special conditions established by the appropriate Board panel and to the following general conditions. The offender shall:

1. Obey all laws and ordinances;
2. Report to the assigned parole officer as instructed;

3. Notify the assigned parole officer immediately after any arrest, after being served with or receiving a complaint or summons and after accepting any pre-trial release including bail;

4. Notify the assigned parole officer immediately upon the issuance by the appropriate court, pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., of an order granting emergency relief, a temporary or final restraining order or an order establishing conditions of release or bail in a criminal matter or offense arising out of a domestic violence situation, and comply with any condition established within the respective order until the order is dissolved by the appropriate court or until a condition is modified or discharged by the appropriate court;

5. Reside at a residence approved by the assigned parole officer;

6. Obtain the permission of the assigned parole officer prior to any change of address or residence;

7. Obtain the permission of the assigned parole officer prior to leaving the state of the approved residence for any purpose;

8. Refrain from owning or possessing any firearm, as defined in N.J.S.A. 2C:39-1f, for any purpose;

9. Refrain from owning or possessing any weapon enumerated in N.J.S.A. 2C:39-1r;

10. Refrain from the purchase, use, possession, distribution or administration of any narcotic or controlled dangerous substance, controlled dangerous substance analog, imitation controlled dangerous substance or any paraphernalia related to such substances except as prescribed by a physician;

11. Cooperate in any medical and/or psychological examination or tests as directed by the assigned parole officer;

12. Participate in and successfully complete an appropriate community or residential counseling or treatment program as directed by the assigned parole officer;

13. Submit to drug or alcohol testing at any time as directed by the assigned parole officer;

14. Obtain the permission of the assigned parole officer prior to securing, accepting or engaging in any employment or business activity and prior to a change of employment;

15. Notify promptly the assigned parole officer upon becoming unemployed;

16. Refrain from any contact, verbal, written or through a third party, with the victim(s) of the offense unless contact is authorized by the assigned parole officer;

17. Comply with any curfew established by the assigned parole officer;

(n) Additional special conditions may be imposed by the District Parole Supervisor, an Assistant District Parole Supervisor or the designated representative of the District Parole Supervisor when it is the opinion that such conditions would reduce the likelihood of recurrence of criminal behavior. The offender and the Board shall be given written notice upon the imposition of such conditions.

1. Upon notice being received by the Board, the appropriate Board panel shall review the offender's case and determine whether to vacate, modify or affirm the additional special condition(s).

2. The Board panel shall notify the District Parole Supervisor of its determination within three working days of receipt of notice of the imposition of the additional special condition(s).

3. The District Parole Supervisor shall notify the offender in writing of the determination of the Board panel and shall cause a written record of such notice to be made in the offender's case file.

4. A special condition shall not be deemed effective until affirmed by the appropriate Board panel.

(o) Pursuant to N.J.S.A. 2C:43-6.4(d), an offender who violates a condition of a special sentence of community supervision without good cause is guilty of a crime of the fourth degree.

(p) An offender shall remain under community supervision for life until such time as the appropriate court shall terminate the supervision status pursuant to N.J.S.A. 2C:43-6.4(c).

New Rule, R.1998 d.144, effective March 16, 1998.

See: 29 N.J.R. 4243(a), 30 N.J.R. 1044(a).

Amended by R.1998 d.391, effective August 3, 1998.

See: 30 N.J.R. 1176(a), 30 N.J.R. 2920(a).

In (h), inserted a new 10 and 11, and recodified former 10 through 12 as 12 through 14.

Amended by R.2000 d.50, effective February 7, 2000.

See: 31 N.J.R. 3579(a), 32 N.J.R. 472(b).

Inserted (b)22.

SUBCHAPTER 7. REVOCATION OF PAROLE

10A:71-7.1 Commencement of revocation proceedings

Whenever the parole officer has probable cause to believe that a parolee under his supervision has seriously or persistently violated the conditions of parole, the parole officer shall file a report with the District Parole Supervisor requesting the commencement of revocation proceedings.

10A:71-7.2 Issuance of warrants

(a) The parole officer shall request that a parole violation warrant be issued when the parole officer has probable cause to believe that the parolee has seriously or persistently violated parole conditions by conduct other than new criminal charges or new acts of delinquency, and where evidence indicates that the parolee poses a danger to the public safety or may not appear at revocation proceedings.

(b) In accordance with the provisions of N.J.S.A. 30:4-123.62, the Director of Parole, Supervising Parole Officers, the Supervisor of the Office of Interstate Services, District Parole Supervisors, and the designated supervisory representatives of the Commission are hereby authorized to issue warrants on behalf of the Chairperson.

(c) In the absence of the individual(s) authorized to issue warrants pursuant to (b) above, such individual(s) shall designate an acting chief or acting supervisor for the purpose of issuing warrants.

(d) If an emergency exists and if the individual(s) authorized to issue warrants pursuant to (b) and (c) above are not available, a parole officer may issue a warrant pending review by the individual(s) authorized to issue warrants pursuant to (b) and (c) above.

1. When a warrant is issued pursuant to (d) above, the individual(s) authorized to issue warrants pursuant to (b) or (c) above shall review the basis for the issuance of such warrant within 48 hours of the issuance of the warrant.

2. If such individual determines that the issuance of the warrant is not necessary, the warrant shall be immediately withdrawn.

Amended by R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

(b) deleted "of the Board"; (c) added "the basis for the issuance of".

Amended by R.1997 d.168, effective April 7, 1997.

See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (b), inserted reference to designated supervisory representatives of the Commission.

Amended by R.2000 d.50, effective February 7, 2000.

See: 31 N.J.R. 3579(a), 32 N.J.R. 472(b).

In (b), substituted a reference to the Director of Parole for a reference to the Chief of the Bureau of Parole, and inserted a reference to Supervising Parole Officers.

Case Notes

Trial judge vacated all aspects of previous sentence and imposed new ones following violation of probation; no double penalties. *State v. Harvey*, 273 N.J.Super. 572, 642 A.2d 1052 (A.D.1994).

Defendant was not entitled to credit against sentence imposed on new charges for time spent in presentence custody after parole warrant was lodged. *State v. Harvey*, 273 N.J.Super. 572, 642 A.2d 1052 (A.D.1994).

Parolee arrested on new charge was entitled to award of jail credit for time served while awaiting disposition of new charge. *State v. Williams*, 266 N.J.Super. 154, 628 A.2d 837 (L.1993).

Parolee charged with parole violation need not be returned to custody even after probable cause was found. *State v. Williams*, 266 N.J.Super. 154, 628 A.2d 837 (L.1993).

10A:71-7.3 Motion for accelerated revocation

(a) Upon the arrest of a parolee for an alleged offense committed while on parole or upon the detention of a juvenile for an alleged act of delinquency committed while on parole, it shall be the responsibility of the local police department to immediately notify the prosecuting authority and the parole officer of the fact of the parolee's arrest. Notification to the prosecutor may be restricted pursuant to instructions from the prosecutor's office.

(b) If the prosecuting authority, the Director of Parole or the Commission determines that the charges against the parolee are of a serious nature and the parolee otherwise poses a danger to public safety, the prosecuting authority, the Director of Parole or the Commission may apply in writing to the Chairperson or his or her designated representative for the prompt initiation of revocation proceedings.

1. Such application shall include:
 - i. The amount of bail, if any, set in the case; and
 - ii. An evaluation of the likelihood of the parolee posting bail or being released from detention; and
 - iii. Appropriate discovery material which will clearly document that the parolee may have committed a new crime or an act of delinquency; and
 - iv. The reasons why the parolee poses a danger to public safety.
2. If the application is submitted by a prosecuting authority, such application shall also include:
 - i. A concise, comprehensive synopsis of the specific facts, statements or other evidence implicating the parolee in the commission of the alleged crime; and
 - ii. An affirmative representation that the case is not subject to any plea agreement which may result in the imposition of a non-custodial term or a custodial term of less than one year.
3. If the application is submitted by the Director of Parole or the Commission, such application shall also include an up-to-date chronological supervision report on the parolee's case.

(c) Upon receipt of an application from a prosecuting authority pursuant to (b) above, the Chairperson or his or her designee shall direct the Bureau of Parole or the Commission to submit within three days for consideration an up-to-date chronological supervision report on the parolee's case.

(d) Upon review of the application and chronological supervision report, a determination shall be made by the Chairperson and a designated Board member or a designated two-member Board panel as to whether the charges against the parolee are of a serious nature, whether the parolee otherwise poses a danger to public safety and whether the revocation process shall be initiated. The Chairperson or his or her designated representative shall advise the prosecuting authority, the Director of Parole or the Commission and the District Parole Supervisor or the designated representative of the Commission, as appropriate, as to whether the revocation process shall or shall not be initiated.

(e) If the revocation process is initiated pursuant to this subsection, the Chairperson or his or her designated representative shall immediately authorize the issuance of a warrant for the arrest of the parolee.

(f) If the revocation process is initiated at the request of a prosecuting authority, a representative of the prosecuting authority shall appear at any preliminary and any revocation hearing in order to present evidence and/or testimony in regard to the parolee's alleged violation of parole conditions. It shall be the responsibility of the prosecuting authority to insure the appearance of any witness(es) deemed necessary for the presentation of the case against the parolee.

(g) If a parolee testifies at any preliminary or any revocation hearing initiated pursuant to this subsection, the parolee shall be informed that, pursuant to N.J.S.A. 30:4-123.60, his or her testimony and the evidence derived therefrom shall not be used against him or her in a subsequent criminal prosecution or delinquency adjudication.

(h) If the prosecuting authority makes application for the initiation of revocation proceedings pursuant to this section, he or she shall be notified of any subsequent action on the revocation case by a hearing officer, Board panel or Board.

Amended by R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

(b)3 added the word "clearly"; (e) added "and/or testimony in regard to".

Amended by R.1993 d.398, effective August 16, 1993.

See: 25 N.J.R. 435(a), 25 N.J.R. 3829(a).

Amended by R.1995 d.109, effective February 21, 1995.

See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).

Amended by R.1997 d.168, effective April 7, 1997.

See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (a), substituted "offense" for "crime; in (b), (b)3, (c) and (d), inserted reference to Commission or to a designated representative of the Commission; and in (g), substituted "delinquency adjudication" for "delinquency prosecution".

Amended by R.2000 d.50, effective February 7, 2000.

See: 31 N.J.R. 3579(a), 32 N.J.R. 472(b).

In (b) and (d), substituted references to the Director of Parole for references to the Chief of the Bureau of Parole throughout.

10A:71-7.4 Preliminary hearing

When a parolee is arrested on a parole violation warrant, a preliminary hearing shall be conducted by a hearing officer to determine whether probable cause exists to believe that the parolee has seriously or persistently violated conditions of parole and whether revocation of parole is desirable.

10A:71-7.5 Preliminary hearing; scheduling

(a) The preliminary hearing shall be conducted within 14 days of the parolee's return to custody as a parole violator, unless the hearing officer or the parolee requests a postponement of such hearing.

(b) If the parolee requests a postponement of the preliminary hearing, such postponement shall be granted by the hearing officer. Such request shall be made in writing, and the hearing officer shall record such request in the parolee's case record.

(c) If the hearing officer requests a postponement of the preliminary hearing, such postponement, if granted, shall not exceed 14 days from the original deadline determined pursuant to (a) above.

(d) If the request for postponement by the hearing officer is due to unanticipated scheduling problems or other emergent circumstances, such request shall be granted by the appropriate Board panel.

10A:71-7.6 Designation of preliminary hearing officers

(a) Preliminary hearings shall be conducted by a hearing officer appointed by the Director of Parole or by the Commission, as appropriate.

(b) The designated hearing officer shall be an impartial official and may not be directly involved in supervision of the parolee or otherwise previously involved in the parolee's case.

(c) Such appointment shall be made by authority of the Chairperson, and shall in no way limit or otherwise alter the authority of the Chairperson to designate or appoint a hearing officer for preliminary hearings in cases where the Chairperson deems such action appropriate.

Amended by R.1985 d.213, effective May 6, 1985.
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).
Amended by R.1997 d.168, effective April 7, 1997.
See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (a), inserted reference to the Commission.
Amended by R.2000 d.50, effective February 7, 2000.
See: 31 N.J.R. 3579(a), 32 N.J.R. 472(b).

In (a), substituted a reference to the Director of Parole for a reference to the Chief of the Bureau of Parole.

10A:71-7.7 Preliminary hearing; notice of hearing

(a) It shall be the responsibility of the parole officer, District Parole Supervisor or the designated representative of the Commission, as appropriate, to give written notice to the parolee of the time, date and place of the preliminary hearing at least three days prior to the preliminary hearing unless the parolee waives such notice.

(b) Such notice shall be served upon the parolee by personal service or by regular mail to the institution where the parolee is housed or to the address of record.

(c) Such notice shall inform the parolee of the purpose of the hearing; the violation(s) of parole conditions alleged; the time, date, place and circumstances of the alleged violation(s); the possible action which may be taken as a result of revocation proceedings; and the following rights to

which the parolee shall be entitled at the preliminary hearing:

1. The right to appear and speak in his or her own behalf and to be aided by an interpreter if such aid is determined to be necessary by the hearing officer.

2. The right to representation by an attorney or such other qualified person as the parolee may retain, or if the parolee is determined to be indigent, the right to representation by an attorney assigned from the list maintained in accordance with R.3:27-2, provided the parolee first makes such a request based on a timely and colorable claim that:

i. The parolee did not commit the alleged violation of the specified parole condition(s); or

ii. The parolee did commit the violation of the specified parole condition(s), but there are substantial reasons which justified or mitigated the violation(s) and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present.

3. The right to remain silent.

4. The right to present witnesses to testify in his or her behalf as to matters relevant to the alleged violation(s) of parole.

5. The right to confront and cross-examine adverse witnesses, unless the hearing officer determines that such witnesses would be subjected to risk or harm.

6. The right to present documentary evidence and any other relevant material or information.

7. The right to waive such hearing.

8. The right to request postponement of such hearing.

As amended, R.1981 d.106, effective May 7, 1981.

See: 13 N.J.R. 101(b), 13 N.J.R. 302(a).

(a): written notice of preliminary hearing requirement changed from "within seven days of the parolee's arrest as a parole violator" to "at least three days prior to the preliminary hearing".

Amended by R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Added text to (b) "or to the address of record".

Amended by R.1995 d.109, effective February 21, 1995.

See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).

Amended by R.1997 d.168, effective April 7, 1997.

See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (a), inserted reference to a designated representative of the Commission.

10A:71-7.8 Preliminary hearing; determination of probable cause

(a) At the conclusion of the preliminary hearing, the hearing officer shall determine whether probable cause exists to believe that the parolee has seriously or persistently violated conditions of his or her parole and whether revocation of parole is desirable.

(b) Immediately upon such determination, the hearing officer shall verbally advise the parolee of the determination.

10A:71-7.9 Status of parolee pending parole revocation hearing

(a) The hearing officer shall immediately withdraw the warrant, except as provided in (b) below, if he or she determines that:

1. Probable cause does not exist to believe that the parolee has seriously or persistently violated conditions of parole; or
2. Probable cause does exist to believe that the parolee has seriously or persistently violated conditions of parole but that revocation of parole is not desirable.

(b) In the case of a parolee who is on parole on a sentence imposed for the offense of murder, aggravated manslaughter, manslaughter, death by vehicular homicide, aggravated assault, kidnapping, aggravated sexual assault, sexual assault, robbery first degree, burglary second degree, terroristic threats or endangering the welfare of a child, the warrant shall not be withdrawn pursuant to (a) above if the hearing officer determines that, based on the review of the hearing record and the review of the Board's records on the parolee, the parolee would pose a danger to the public safety. In such a case, the parolee shall remain in custody pending a review by the appropriate Board panel pursuant to N.J.A.C. 10A:71-7.11.

(c) When the hearing officer determines that probable cause exists to believe that the parolee has seriously or persistently violated conditions of parole, it shall be the responsibility of the hearing officer to determine whether the parolee shall be taken into custody pursuant to N.J.A.C. 10A:71-7.2, continued in custody or released from custody pending the revocation hearing.

1. If the hearing officer determines that the parolee should be released from custody, the hearing officer shall have the authority to direct that the warrant be withdrawn.
2. The parolee shall be taken into custody or continued in custody only where, in the opinion of the hearing officer, the parolee poses a danger to the public safety or where the parolee may not appear at the revocation hearing.

(d) In the case of a parolee who is on parole on a sentence imposed for the offense of murder, aggravated manslaughter, manslaughter, death by vehicular homicide, aggravated assault, kidnapping, aggravated sexual assault, sexual assault, robbery first degree, burglary second degree, terroristic threats or endangering the welfare of a child, the warrant shall not be withdrawn pursuant to (c) above unless the hearing officer determines, based on the review of the hearing record and the review of the Board's records on parolee, that the parolee does not pose a danger to the public safety. If the warrant is authorized to be withdrawn, the hearing officer shall summarize in the Notice of Decision issued pursuant to N.J.A.C. 10A:71-7.10 the basis for the determination that the parolee does not pose a danger to the public safety.

(e) When the hearing officer determines that the parolee should be released from custody, the hearing officer shall establish any parole conditions deemed reasonable in order to reduce the likelihood of recurrence of criminal behavior. Any parole condition established by the hearing officer shall be subject to review by the appropriate Board panel.

(f) When the hearing officer determines that a State prison parolee should be released pursuant to (a) above, the hearing officer may direct any loss of commutation time credits deemed necessary pursuant to N.J.A.C. 10A:71-6.8.

Amended by R.1985 d.213, effective May 6, 1985.
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Added text "taken into custody".

Amended by R.1999 d.252, effective August 2, 1999.
See: 31 N.J.R. 1140(a), 31 N.J.R. 2218(a).

Rewrote the section.

Case Notes

Trial judge vacated all aspects of previous sentence and imposed new ones following violation of probation; no double penalties. *State v. Harvey*, 273 N.J.Super. 572, 642 A.2d 1052 (A.D.1994).

Defendant was not entitled to credit against sentence imposed on new charges for time spent in presentence custody after parole warrant was lodged. *State v. Harvey*, 273 N.J.Super. 572, 642 A.2d 1052 (A.D.1994).

Parolee arrested on new charge was entitled to award of jail credit for time served while awaiting disposition of new charge. *State v. Williams*, 266 N.J.Super. 154, 628 A.2d 837 (L.1993).

Parolee charged with parole violation need not be returned to custody even after probable cause was found. *State v. Williams*, 266 N.J.Super. 154, 628 A.2d 837 (L.1993).

10A:71-7.10 Preliminary hearing; notice of decision

(a) At the conclusion of the preliminary hearing, it shall be the responsibility of the hearing officer to forward a Notice of Decision to the parolee and the parolee's attorney, the Department or Commission, as appropriate, and the appropriate Board panel within seven days of the date of the preliminary hearing.

(b) Such Notice of Decision shall consist of a summary of the proceeding, and shall contain the reasons for the hearing officer's decision that probable cause does or does not exist, the evidence relied upon in support of such decision and the hearing officer's decision as to the status of the parolee pending the revocation hearing.

(c) Such notice shall be served upon the parolee's attorney and the parolee by personal service or by regular mail to the institution where the parolee is housed or to the address of record.

(d) The parolee and the parolee's attorney may submit written exceptions or comments on the hearing summary. Such exceptions shall be forwarded to the appropriate Board panel within seven days after the receipt of the hearing officer's report unless the parolee waives the right to submit exceptions.

Amended by R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Substantially amended.

Amended by R.1997 d.168, effective April 7, 1997.

See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (a), inserted reference to the Commission.

10A:71-7.11 Board panel action pending revocation hearing

(a) The appropriate Board panel shall review the preliminary hearing Notice of Decision within 15 days of the date of the preliminary hearing. The Board panel, upon review of the preliminary hearing Notice of Decision, may modify or overrule the determinations of the preliminary hearing officer.

(b) If the Board panel modifies or overrules the determinations of the preliminary hearing officer, the panel shall take appropriate action on the parolee's case and shall notify the parolee, the parolee's attorney, and the hearing officer in writing as to its decision and the reasons therefor.

(c) The parolee shall be continued in custody or taken into custody only where, in the opinion of the Board panel, the parolee represents a danger to public safety or where the parolee may not appear at the revocation hearing.

Amended by R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

(a) added "upon review"; (b) added "the parolee's attorney".

Amended by R.1999 d.252, effective August 2, 1999.

See: 31 N.J.R. 1140(a), 31 N.J.R. 2218(a).

In (a), added a new first sentence.

10A:71-7.12 Parole revocation hearing

(a) A parole revocation hearing shall be conducted when:

1. A hearing officer determines that probable cause exists to believe that the parolee has seriously or persistently violated the conditions of parole and that revocation of parole is desirable; or

2. The parolee has been convicted of a crime committed while on parole or in the case of a juvenile parolee adjudicated delinquent for an act which, if committed by an adult, would constitute a crime.

(b) A parole revocation hearing may be conducted when the parolee has been convicted of a disorderly persons offense committed while on parole or in the case of a juvenile parolee adjudicated delinquent for an act which, if committed by an adult, would constitute a disorderly persons offense.

(c) If the parolee has not been convicted of a crime committed while on parole or in the case of a juvenile parolee not adjudicated delinquent for an act which, if committed by an adult, would constitute a crime, the purpose of the revocation hearing shall be to determine:

1. Whether, by clear and convincing evidence, the parolee has seriously or persistently violated the conditions of parole; and

2. Whether revocation of parole is desirable.

(d) If the parolee has been convicted of a crime committed while on parole or in the case of a juvenile parolee adjudicated delinquent for an act which, if committed by an adult, would constitute a crime, the purpose of the revocation hearing shall be to determine whether, by clear and convincing evidence, good cause exists why the parolee should not be returned to confinement.

(e) The parole revocation hearing shall be conducted by a hearing officer who shall be a designated representative of the Board and who did not conduct the preliminary hearing.

Amended by R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

(b): Old text deleted and new substituted; (e) added.

Amended by R.1997 d.168, effective April 7, 1997.

See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

Inserted provisions relating to juvenile parolees throughout.

Case Notes

Imposition of a five-year future eligibility term (FET) upon parole revocation for defendant's marijuana possession, a term 400% greater than the guideline maximum, was unreasonable and arbitrary, and violated substantive due process; conduct recited by parole board's decision, including drug use and violence, occurred over a quarter of a century earlier, and the conclusion that defendant's possession of marijuana evidenced a return to his law-breaking days because he had committed murder while under the influence of alcohol and marijuana was unsupported by any scientific or medical authority suggesting that the use of marijuana caused violent behavior. *Hunterson v. DiSabato*, 137 F.Supp.2d 529 (2001).

Parolee stated a § 1983 claim against chairperson of parole board by alleging that preliminary hearing decision was not reviewed in timely fashion and that final revocation hearing was not conducted within 60 days of parolee's arrest for alleged parole violation, resulting in his incarceration for over three and one-half months. *Friedland v. Fauver*, 6 F.Supp.2d 292 (D.N.J. 1998).

Reasonable cause to believe parolee committed crime is insufficient basis for parole revocation (citing former N.J.A.C. 10:70-6.3). *White v. New Jersey State Parole Bd.*, 136 N.J.Super. 360, 346 A.2d 415 (App. Div.1975).

10A:71-7.13 Revocation hearing; scheduling

(a) Except as provided herein, the revocation hearing shall be conducted within 60 days of the date the parolee was taken into custody as a parole violator, or, where the parolee was sentenced or committed to a State correctional or juvenile facility, within 60 days of the date of sentence or commitment.

(b) If the parolee requests a postponement of the revocation hearing and the parolee is currently in custody, such postponement shall be granted by the hearing officer. Such request shall be made in writing, and the hearing officer shall record such request in the parolee's case record.

(c) If the hearing officer requests a postponement of the revocation hearing, such postponement, if granted, shall not exceed 120 days from the original deadline determined pursuant to (a) above.

(d) If the request for postponement by the hearing officer or by a parolee who is not in custody is due to unanticipated scheduling problems or other emergent circumstances, such postponement shall be granted by the appropriate Board panel and shall not exceed 60 days from the originally scheduled date of the revocation hearing.

Amended by R.1985 d.213, effective May 6, 1985.
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

(d) substantially amended.
Amended by R.1997 d.168, effective April 7, 1997.
See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (a), inserted reference to juvenile facility.

10A:71-7.14 Revocation hearing; notice of hearing

(a) It shall be the responsibility of the hearing officer to give written notice to the parolee of the time, date and place of the revocation hearing.

(b) Such notice shall be served upon the parolee by personal service or by regular mail to the institution where the parolee is housed or to the parolee's address of record.

(c) Such notice shall inform the parolee of the following: the purpose of the hearing; the violation(s) of parole conditions alleged; the time, date, place and circumstances of the alleged violation(s); the name(s) of any witness(es) scheduled to appear at the hearing; and the following rights to which the parolee shall be entitled at the revocation hearing:

1. The right to appear and speak in his or her own behalf and to be aided by an interpreter, if such aid is determined to be necessary by the hearing officer.

2. The right to representation by an attorney or such other qualified person as the parolee may retain, or if the parolee is determined to be indigent, the right to representation by an attorney assigned from the list maintained in accordance with R.3:27-2, provided the parolee first makes a timely and colorable claim that:

i. The parolee did not commit the alleged violation of the specified parole condition(s); or

ii. The parolee did commit the violation of the specified parole condition(s), but there are substantial reasons which justified or mitigated the violation(s) and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present.

3. The right to remain silent.

4. The right to present witnesses to testify in his or her behalf as to matters relevant to the hearing.

5. The right to have the hearing officer issue a subpoena to compel the appearance of witnesses, provided that a prima facie showing is made that the prospective witnesses will provide material testimony relevant to the alleged violation(s) of parole.

6. The right to confront and cross-examine adverse witnesses, unless the hearing officer determines that such witnesses would be subject to risk of harm.

7. The right to present documentary evidence and any other relevant material or information.

8. The right to waive such hearing.

9. The right to request postponement of such hearing.

Amended by R.1985 d.213, effective May 6, 1985.
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Substantially amended.
Amended by R.1995 d.109, effective February 21, 1995.
See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).

10A:71-7.15 Status of parolee pending Board panel action

(a) The hearing officer shall immediately withdraw the warrant, except as provided in (b) below, if he or she determines upon the conclusion of the parole revocation hearing that:

1. Clear and convincing evidence does not exist to believe that the parolee has seriously or persistently violated conditions of parole; or

2. Clear and convincing evidence does exist to believe that the parolee has seriously or persistently violated conditions of parole but that revocation of parole is not desirable.

(b) In the case of a parolee who is on parole on a sentence imposed for the offense of murder, aggravated manslaughter, manslaughter, death by vehicular homicide, aggravated assault, kidnapping, aggravated sexual assault, sexual assault, robbery first degree, burglary second degree, terroristic threats or endangering the welfare of a child, the warrant shall not be withdrawn pursuant to (a) above if the hearing officer determines that, based on the review of the hearing record and the review of the Board's records on the parolee, the parolee would pose a danger to the public safety. In such case, the parolee shall remain in custody pending a review by the appropriate Board panel pursuant to N.J.A.C. 10A:71-7.17, 17.17A or 17.17B.

(c) When the hearing officer determines that clear and convincing evidence exists to believe that the parolee has seriously or persistently violated conditions of parole, it shall be the responsibility of the hearing officer to determine whether the parolee shall be taken into custody pursuant to N.J.A.C. 10A:71-7.2, continued in custody or released from custody pending Board panel review.

1. If the hearing officer determines that the parolee should be released from custody, the hearing officer shall have the authority to direct that the warrant be withdrawn.

2. The parolee shall be taken into custody or continued in custody only where, in the opinion of the hearing officer, the parolee poses a danger to the public safety.

(d) In the case of a parolee who is on parole on a sentence imposed for the offense of murder, aggravated manslaughter, manslaughter, death by vehicular homicide, aggravated assault, kidnapping, aggravated sexual assault, sexual assault, terroristic threats or endangering the welfare of a child, the warrant shall not be withdrawn pursuant to (c) above unless the hearing officer determines, based on the review of the hearing record and the review of the Board's records on the parolee, that the parolee does not pose a danger to the public safety. If the warrant is authorized to be withdrawn, the hearing officer shall include in the summary report prepared pursuant to N.J.A.C. 10A:71-7.16 the basis for the determination that the parolee does not pose a danger to the public safety.

(e) When the hearing officer determines that the parolee should be released from custody, the hearing officer shall establish any parole conditions deemed reasonable in order to reduce the likelihood of recurrence of criminal behavior. Any parole condition established by the hearing officer shall be subject to review by the appropriate Board panel.

New Rule, R.1999 d.252, effective August 2, 1999.
See: 31 N.J.R. 1140(a), 31 N.J.R. 2218(a).

Former N.J.A.C. 10A:71-7.15, Record of the revocation hearing, recodified to N.J.A.C. 10A:71-7.16.

10A:71-7.16 Record of the revocation hearing

(a) The hearing officer shall record the revocation hearing by an electronic recording device. If the electronic recording device is not operational the hearing shall proceed only upon the parolee waiving the electronic recording of the hearing. The waiver shall be in writing and signed by the parolee and shall be made a part of the parolee's records. If the parolee does not wish to proceed without the electronic recording of the hearing, the hearing shall be rescheduled within 14 days.

(b) The hearing officer shall prepare a written summary which shall summarize the revocation hearing and contain the hearing officer's opinion as to whether the alleged violation(s) has been substantiated and the reason(s) therefore.

1. Such hearing summary shall be forwarded to the appropriate Board panel.

2. A copy of the hearing summary shall be forwarded to the parolee's attorney or directly to the parolee where he or she has appeared pro se in order that the parolee or his or her attorney may object to or comment on the hearing summary by submitting written exceptions to such summary. Such exceptions shall be forwarded to the appropriate Board panel within seven days after receipt of the hearing officer's hearing summary. A copy of the hearing summary shall also be forwarded to the District Parole Supervisor or the designated representative of the Commission, as appropriate.

(c) The hearing officer may verbally advise the parolee at the time of the hearing of the hearing officer's opinion as to whether the alleged violation(s) has been substantiated.

Amended by R.1980 d.434, effective October 7, 1980.
See: 12 N.J.R. 537(a), 12 N.J.R. 665(a).

(c) added.

Amended by R.1985 d.213, effective May 6, 1985.
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

"has" substituted for "have".

Amended by R.1995 d.109, effective February 21, 1995.
See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).

Amended by R.1997 d.168, effective April 7, 1997.
See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (b)2, deleted "appropriate" preceding "District Parole Supervisor" and inserted reference to a designated representative of the Commission.

Recodified from N.J.A.C. 10A:71-7.15 by R.1999 d.252, effective August 2, 1999.

See: 31 N.J.R. 1140(a), 31 N.J.R. 2218(a).

Former N.J.A.C. 10A:71-7.16, Board panel action; schedule of future parole eligibility dates upon revocation of parole for inmates who have violated parole prior to October 17, 1994, recodified to N.J.A.C. 10A:71-7.17.

Case Notes

Imposition of a five-year future eligibility term (FET) upon parole revocation for defendant's marijuana possession, a term 400% greater than the guideline maximum, was unreasonable and arbitrary, and violated substantive due process; conduct recited by parole board's decision, including drug use and violence, occurred over a quarter of a century earlier, and the conclusion that defendant's possession of marijuana evidenced a return to his law-breaking days because he had committed murder while under the influence of alcohol and marijuana was unsupported by any scientific or medical authority suggesting that the use of marijuana caused violent behavior. *Hunterson v. DiSabato*, 137 F.Supp.2d 529 (2001).

10A:71-7.16A (Reserved)

Recodified to N.J.A.C. 10A:71-7.17A by R.1999 d.252, effective August 2, 1999.

See: 31 N.J.R. 1140(a), 31 N.J.R. 2218(a).