

CHAPTER 71

PAROLE

Authority

N.J.S.A. 30:4-123.48(d), 30:4-123.51(g), 30:4-123.54(d), 30:4-123.59(c), 30:4-123.63 and 30:4-123.64.

Source and Effective Date

R.1995 d.109, effective January 27, 1995.
See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).

Executive Order No. 66(1978) Expiration Date

Chapter 71, Parole, expires on January 27, 2000.

Chapter Historical Note

Chapter 71 was filed and became effective August 7, 1980 as R.1980 d.359. See: 12 N.J.R. 420(b), 12 N.J.R. 538(a). Amendments were filed and became effective September 10, 1981 as R.1981 d.322. See: 13 N.J.R. 436(a), 13 N.J.R. 597(a).

Pursuant to Executive Order No. 66(1978), Chapter 71 was readopted as R.1985 d.213, effective April 15, 1985. See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a). Pursuant to Executive Order No. 66(1978), Chapter 71 was readopted as R.1990 d.141, effective February 5, 1990. See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

Pursuant to Executive Order No. 66(1978), Chapter 71 was readopted as R.1995 d.109. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. BOARD ORGANIZATION

10A:71-1.1 Definitions

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

“Adult inmate” shall mean any person sentenced as an adult to a term of incarceration.

“Board” shall mean the New Jersey State Parole Board.

“Chief Executive Officer” shall mean any warden, superintendent or keeper of any county correctional facility or State correctional facility.

“Commission” shall mean the Juvenile Justice Commission established pursuant to section 2 of P.L. 1995, c.284 (N.J.S.A. 52:17B-170).

“Commissioner” shall mean the Commissioner of the New Jersey Department of Corrections.

“Consulting with” shall mean providing adequate notice, such as but not limited to an agenda, of proposed action, and an opportunity for input reasonably prior to any formal action by the New Jersey State Parole Board or its Chairperson.

“County correctional facilities” shall mean all institutions operated by county authorities to which offenders are committed under sentence as adults and shall include all jails and facilities where sentenced offenders may, from time to time, be housed.

“County inmate” shall mean an inmate who is:

1. Sentenced to serve a term of incarceration of 364 days or less or terms which, in the aggregate, do not exceed 364 days in a county jail facility; or
2. Sentenced to serve a term of incarceration not to exceed 18 months or terms which in aggregate, do not exceed 18 months in a county penitentiary or a workhouse.

“County Penitentiary/Workhouse” shall mean a county correctional facility designated by the Board of Chosen Freeholders to house offenders sentenced to terms of imprisonment not exceeding 18 months.

“Department” shall mean the New Jersey Department of Corrections.

“District parole supervisor” shall mean any district parole supervisor in the Bureau of Parole of the New Jersey Department of Corrections.

“Juvenile facilities” shall mean the New Jersey Training School for Boys, the Juvenile Medium Security Facility, any other facility or program established by the Commission in the future and any other facility or program subject to the jurisdiction of the Commission or established or contracted for in the future by the Commission.

“Juvenile inmate” shall mean any person committed by a juvenile court to a term of incarceration pursuant to N.J.S.A. 2A:4-61(h) or committed by the Family Court to a term of incarceration pursuant to N.J.S.A. 2A:4A-44d(1).

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.

“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, 7.16, 7.16A and 7.16B. 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.

“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.

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”.

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:71-7.16, 7.16A or 7.16B.

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, 7.16, 7.16A or 7.16B.

(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).

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. *Alebras 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
(Years)

Crime Category	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.

(d) If an inmate has received more than one term, the longest term imposed shall be used in determining the presumptive primary eligibility date or, if the terms are of equal length, the crime which, in the opinion of the hearing officer or the young adult Board panel, represents the most serious crime shall be used in determining the presumptive primary eligibility date.

(e) The young adult Board panel may establish a primary eligibility date which differs from that required by the provisions of (a), (b) and (c) above, if the primary eligibility date which would be established pursuant to such subsections is clearly inappropriate in consideration of the circumstances of the crime and the characteristics and prior criminal record of the inmate.

1. If, in the opinion of the hearing officer establishing the primary eligibility date, the date which would be established pursuant to (a), (b) and (c) above is clearly inappropriate as provided herein, the hearing officer shall refer such case to the young adult Board panel.

2. The young adult Board panel or the hearing officer shall, at least 14 days prior to the Board panel's determination of the primary eligibility date, notify the inmate in writing that a primary eligibility date pursuant to (a), (b) and (c) above has not been established and the reasons therefor.

3. The young adult Board panel shall, upon disposition of the case, state in writing to the inmate and the

Board the reasons for the establishment of any primary eligibility date which differs from the provisions of (a), (b) and (c) above.

(f) Credit awarded by the sentencing court pursuant to R.3:21-8 for time served in a county jail prior to the date of sentence shall reduce the presumptive primary eligibility date established pursuant to (a), (b), (c) or (e) above.

(g) Except as provided herein, any primary eligibility date for a young adult offender established pursuant to this section or N.J.A.C. 10A:71-7.16, 7.16A or 7.16B may be reduced through program participation by the inmate.

1. If such inmate's level of program participation is above average, the reduction shall be the rate of 15 days for every month of the primary eligibility term less jail credits.

2. If such inmate's level of program participation is average, the reduction shall be at the rate of 10 days for every month of the primary eligibility jail term less jail credits.

3. If such inmate's level of program participation is below average, the 150 reduction shall be at the rate of five days for every month of the primary eligibility term less jail credits.

4. If such inmate's level of program participation is poor, no reduction shall be made.

(h) An inmate's level of program participation shall be established by the young adult Board panel or an assigned hearing officer.

1. Upon the expiration of one-half of the inmate's primary eligibility term less jail credits, or upon incarceration for a one-year period, whichever is earlier, it shall be the responsibility of the chief executive officer of the institution of incarceration to report to the young adult Board panel, the extent of the inmate's program participation and the level of progress achieved by the inmate.

2. Upon consideration of such report, the young adult Board panel or an assigned hearing officer shall establish the inmate's level of program participation and corresponding eligibility reduction and shall advise the inmate and the chief executive officer in writing of such determination and the reasons therefor.

(i) Parole eligibility dates shall be restricted as follows:

1. Except in the case of murder or kidnapping, under no circumstances shall a primary eligibility date for a young adult inmate sentenced for a first degree crime be established at greater than 60 months.

2. Under no circumstances shall a primary eligibility date for a young adult inmate sentenced for a second degree crime be established at greater than 28 months.

3. Under no circumstances shall a primary eligibility date for a young adult inmate sentenced for a third degree crime be established at greater than 16 months.

4. Under no circumstances shall a primary eligibility date for a young adult inmate sentenced for a fourth degree crime be established at greater than nine months.

(j) If an adult has received an indeterminate sentence and a State Prison sentence, the parole eligibility term derived from the indeterminate sentence shall be aggregated with the eligibility term on the State Prison sentence and credits pursuant to N.J.A.C. 10A:71-3.2(g)2 shall apply to the aggregate parole eligibility term.

(k) The prior provisions of (a) above shall apply to young adult inmates whose offenses were committed prior to March 5, 1990 and shall continue in effect for that purpose. The amendments to (a) above shall apply to young adult inmates whose offenses were committed on or after March 5, 1990.

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

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

As amended, R.1980 d.359, effective August 7, 1980.

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

As amended, R.1980 d.554, effective December 23, 1980.

See: 12 N.J.R. 664(e), 13 N.J.R. 101(c).

(f)1-3, 5 and (g)1: term "less jail credits" added.

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).

New (f): redesignated (f)-(j) as (g)-(k).

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

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

Specifies Category E is second degree offense and changes effective date in (k) to March 5, 1990.

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 (g), inserted additional N.J.A.C. reference.

Case Notes

"Gap time credit" applied to reduce the maximum indeterminate sentence to which a juvenile could be subject. *Mitnaul v. New Jersey State Parole Bd.*, 280 N.J.Super. 164, 654 A.2d 1022 (A.D.1995).

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).

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).

Failure to justify by good cause imposition of concurrent seven-year indeterminate terms upon young adult offender required reduction to term not exceeding five years. *State v. Davis*, 229 N.J.Super. 66, 550 A.2d 1241 (A.D.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.

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).

10A:71-3.4 Institutional infractions; adult inmates

(a) It shall be the responsibility of the chief executive officer, within seven days of resolution of any administrative appeal, to notify in writing the senior Board representative at the institution that an adult inmate has committed an institutional infraction listed in (c) below.

(b) Except as otherwise provided in N.J.A.C. 10A:71-5, upon being advised by the senior Board representative at the institution that an adult inmate has committed an institutional infraction listed in (c) below, the appropriate Board panel or designated hearing officer may increase the inmate's eligibility date according to the schedule listed herein.

(c) The appropriate Board panel, designated hearing officer or senior Board representative at the institution shall, at least 14 days prior to the consideration of the adult inmate's case, notify the inmate in writing of the following:

1. The inmate's case and institutional records will be reviewed for the possible increase in the inmate's parole eligibility date as a result of the commission of an institutional infraction(s);

2. The inmate may submit in writing to the appropriate Board panel or designated hearing officer a statement pertaining to any mitigating circumstances.

(d) Institutional infractions specified and defined by the Department shall be assigned to categories on the following basis:

1. Infraction Category A shall consist of .001, Killing.
2. Infraction Category B shall consist of .101, Escape (provided such escape is from a medium or maximum security location); .201, Possession or introduction of an explosive, incendiary device or any ammunition; .202, Possession or introduction of a gun, firearm, weapon, sharpened instrument, knife, or unauthorized tool (provided such weapon is a gun or other firearm); and .251, Rioting.
3. Infraction Category C shall consist of .003, Assaulting any person with a weapon; .006, Extortion, blackmail, protection, demanding or receiving favors, money or anything of value in return for protection against others, to avoid bodily harm, or under threat of informing; .101, Escape (provided such escape is from a minimum security location); .102, Attempting or planning escape (provided such attempt is from a medium or maximum security location); .202, Possession or introduction of a gun, firearm, weapon, sharpened instrument, knife, or unauthorized tool (provided such weapon is not a gun or other firearm); .252, Encouraging others to riot; and .551, Making or possessing intoxicants or alcoholic beverages.
4. Infraction Category D shall consist of .002, Assaulting any person; .102, Attempting or planning escape (provided such attempt is from a minimum security location); .007, Hostage taking; .151, Setting a fire; .155, Adulteration of any food or drink; .203, Possession or introduction of any narcotic paraphernalia, drugs, or intoxicants not prescribed for the individual by the medical or dental staff; .204, Use of any narcotic paraphernalia, drugs, or intoxicants not prescribed for the individual by the medical or dental staff; .207, Possession of money or currency (in excess of \$50.00 unless specifically authorized); .214, Possession of unauthorized keys or other security equipment; .253, Engaging in, or encouraging, a group demonstration; .255, Encouraging others to refuse to work or to participate in work stoppage; .552, Being intoxicated; and .751, Giving or offering any official or staff member a bribe, or anything of value.
5. Infraction Category E shall consist of .004, Fighting with another person; .005, Threatening another with bodily harm or with any offense against his person or his property; .153, Stealing (Theft); .257, Violating a condition of any community release program; .258, Refusing to submit to urine analysis; .325, Counterfeiting, forging or unauthorized reproduction or unauthorized use of any classification document, court document, psychiatric, psychological or medical report, money or any other official document; .704, Perpetrating frauds, deceptions, confidence games, riots or escape plots through mail; and .708, Refusal to submit to a search.

6. Infraction Category F shall consist of .205, Misuse of authorized medication; .306, Conduct which disrupts or interferes with the security or orderly running of the institution; and .601, Gambling.

7. Infraction Category G shall consist of .803, Attempting to commit any of the above acts preceded by an asterisk, aiding another person to commit any such act, or making plans to commit such acts shall be considered the same as a commission of the act itself.

(e) Except as provided herein, an infraction in any category defined pursuant to (d) above shall result in an increase of the inmate's eligibility date as follows:

1. Category A: 60 months;
2. Category B: 12 months;
3. Category C: Nine months;
4. Category D: Six months;
5. Category E: Four months;
6. Category F: Three months;
7. Category G: One half of the increase which would be required pursuant to this subsection if the inmate's action had resulted in the commission of the infraction which he or she attempted.

(f) The appropriate Board panel or designated hearing officer shall notify the inmate and the chief executive officer of the institution or designee in writing of a determination to increase or not increase the inmate's parole eligibility.

1. If the inmate's parole eligibility date is to be increased, the notice shall include the time period by which the parole eligibility date is to be increased.
2. If the inmate's parole eligibility date is to be increased, the senior Board representative at the institution shall, within 90 days of the appropriate Board panel's or designated hearing officer's decision, notify the inmate and the chief executive officer of the institution or designee in writing of the new parole eligibility date.

(g) When, in the opinion of the designated hearing officer or Board panel reviewing an infraction pursuant to this section, the inmate's conduct and the characteristics of the inmate warrant an adjustment in the increase in the eligibility date required pursuant to (e) above, the eligibility date may be further increased due to aggravating factors or may be decreased due to mitigating factors by up to the following time periods:

1. Category A: 12 months;
2. Category B: Six months;
3. Category C: Four months;
4. Category D: Three months;
5. Category E: Four months;

6. Category F: Three months;

7. Category G: Three months, provided no reduction of the previous eligibility date is made.

(h) The appropriate Board panel, upon the recommendation from the designated hearing officer, may determine that no increase in the eligibility date shall result from an infraction, or the Board panel may establish an increase which differs from that required by the provisions of (e) and (g) if the increase which would be established pursuant to such subsections is clearly inappropriate in consideration of the severity of the inmate's conduct and the characteristics of the inmate.

1. If, in the opinion of the hearing officer establishing the increase in the eligibility date, the increase which would be established pursuant to (e) and (g) above is clearly inappropriate as provided herein, the hearing officer shall refer such case to the appropriate Board panel.

2. Upon determining that the increase in eligibility pursuant to (e) and (g) above is inappropriate, the hearing officer shall, at least 14 days prior to the Board panel's consideration of the case, notify the inmate in writing that an increase in the eligibility date pursuant to (e) and (g) above has not been established and the reasons therefor.

3. The Board panel shall, upon disposition of the case, state in writing to the inmate and the Board the reasons for the establishment of any increase in the eligibility date which differs from the provisions of (e) and (g) above.

(i) When, in the opinion of the hearing officer or Board panel, a series of infractions resulted from a single transaction, any increases in an inmate's eligibility date required pursuant to this section for such infractions shall be deemed to run concurrently.

Case Notes

Material arising out of parole hearings was not subject to disclosure under right-to-know law. *Home News Pub. Co. v. State*, 224 N.J.Super. 7, 539 A.2d 736 (A.D.1988).

Statute and N.J.A.C. 10A:71-2.1 established a confidentiality exception to parole record disclosure sufficiently protective of a prisoner's interest; documents in parole file administratively removed from prisoner's copy must be identified confidential and the reason for nondisclosure noted in the Parole Board's file; denial of parole found sufficiently supported by information openly before the Board without any suggestion that materials withheld for confidentiality reasons played a substantial role. *Thompson v. New Jersey State Parole Bd.*, 210 N.J.Super. 107, 509 A.2d 241 (App.Div.1986).

10A:71-3.8 Public notice; adult inmates

At least 30 days prior to parole consideration, a copy of the list prepared pursuant to N.J.A.C. 10A:71-3.7(a), including the county from which the inmate was sentenced and the crime for which he or she was incarcerated, shall be forwarded to the appropriate prosecutor's office, the sentencing court, the Office of the Attorney General, the State Police, news organizations which maintain offices at the State Capitol and any other news organizations which request such list and to any other criminal justice agencies whose information and comment may be relevant.

(b) In no case shall an inmate serving a life term, a fixed minimum and maximum term, a specific term or an indeterminate term be released on parole unless public notice pursuant to (a) above has been provided on these terms.

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

Case Notes

The Parole Act provides that the prosecutor and other criminal justice agencies, whose information and comment may be relevant, be notified prior to parole consideration; prosecutor has a right to be heard regarding punitive aspects of a sentence; prosecutor not permitted to appear and be heard at civil commitment proceeding for patient committed as a parole condition, as no legal authority exists for a prosecutor to assume an adversarial role in the proceeding, even if in the nature of a parole hearing (cited as N.J.A.C. 10A:71-3.8). In re *Trifari Civil Commitment*, 188 N.J.Super. 122, 456 A.2d 123 (Law Div.1982).

10A:71-3.9 Inmate statements; adult inmates

(a) It shall be the responsibility of the chief executive officer to provide each inmate with a copy of the report filed on his or her case pursuant to N.J.A.C. 10A:71-3.7 at the time such report is filed with the Board panel, except information classified as confidential by the Board pursuant to N.J.A.C. 10A:71-2.1 or the rules and regulations of the Department.

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

(c) Such statement shall be filed within 15 days of the date the inmate receives his or her copy of such report, unless the inmate requests and receives a postponement of the hearing process pursuant to N.J.A.C. 10A:71-3.50.

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.

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 (c).

Case Notes

Statute and N.J.A.C. 10A:71-2.1 established a confidentiality exception to parole record disclosure sufficiently protective of a prisoner's interest; documents in parole file administratively removed from prisoner's copy must be identified confidential and the reason for nondisclosure noted in the Parole Board's file; denial of parole found sufficiently supported by information openly before the Board without any suggestion that materials withheld for confidentiality reasons played a substantial role. *Thompson v. New Jersey State Parole Bd.*, 210 N.J.Super. 107, 509 A.2d 241 (App.Div.1986).

10A:71-3.10 Purpose of parole hearing; adult 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 the State of New Jersey 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.

(c) In the case of an inmate sentenced to the Adult Diagnostic and Treatment Center pursuant to N.J.S.A. 2A:164-3 et seq., or in the case of an inmate sentenced to the Adult Diagnostic and Treatment Center pursuant to N.J.S.A. 2C:47-1 et seq. for an offense committed prior to December 1, 1998, the Board panel shall determine whether the inmate, if released, is capable of making an acceptable social adjustment in the community.

(d) In the case of an inmate sentenced to the Adult Diagnostic and Treatment Center pursuant to N.J.S.A. 2C:47-1 et seq. for an offense committed on or after December 1, 1998, the Board panel shall determine whether evidence supplied in reports or developed or produced at the hearing indicates by the 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 if released on parole.

(e) If an inmate is being considered for parole on sentences to both the Corrections Complex and to the Adult Diagnostic and Treatment Center, the Board panel shall make independent determinations required pursuant to both (a) or (b) and (c) or (d) above.

(f) In the cases of inmates committed to the Adult Diagnostic and Treatment Center, the absence of six months of continuous acceptable therapeutic progress in the Adult Diagnostic and Treatment Center, or the absence of documented acceptable therapeutic progress in a correctional facility other than the Adult Diagnostic and Treatment Center caused by either N.J.S.A. 2C:47-4(b) or the imposition of a consecutive term of incarceration in a correctional facility, may rebut, unless the facts of the inmate's case indicate to the contrary, the presumption for parole.

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

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

(c) substantially amended. (d) 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.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; inserted a new (b); recodified former (b) through (d) as (c) through (e); and in (d), inserted a reference to (c).

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

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

Rewrote (c); inserted a new (d); recodified former (d) and (e) as (e) and (f); and in the new (e), inserted a reference to (d).

10A:71-3.11 Factors considered at parole hearings; adult 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 any persons or agencies which have knowledge of the inmate.

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

1. Commission of a crime while incarcerated.
2. Commission of serious disciplinary infractions.
3. Nature and pattern of previous convictions.
4. Adjustment to previous probation, parole and incarceration.
5. Facts and circumstances of the offense.
6. Aggravating and mitigating factors surrounding the offense.
7. Pattern of less serious 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 that provide on-the-job training and individual or group counseling.

9. Statements by institutional staff, with supporting documentation, that the inmate is likely to commit a crime if released.

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

11. Documented changes 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 or marital relationships at the time of eligibility.

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 will commit another crime.

18. History of employment, education and military service.

19. Family and marital history.

20. Statement by the court reflecting the reasons for the sentence imposed.

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.

23. The results of the objective risk assessment instrument.

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

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

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

(b) 21 and 22 added.

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), added 23.

Administrative correction.

See: 31 N.J.R. 1816(a).

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).

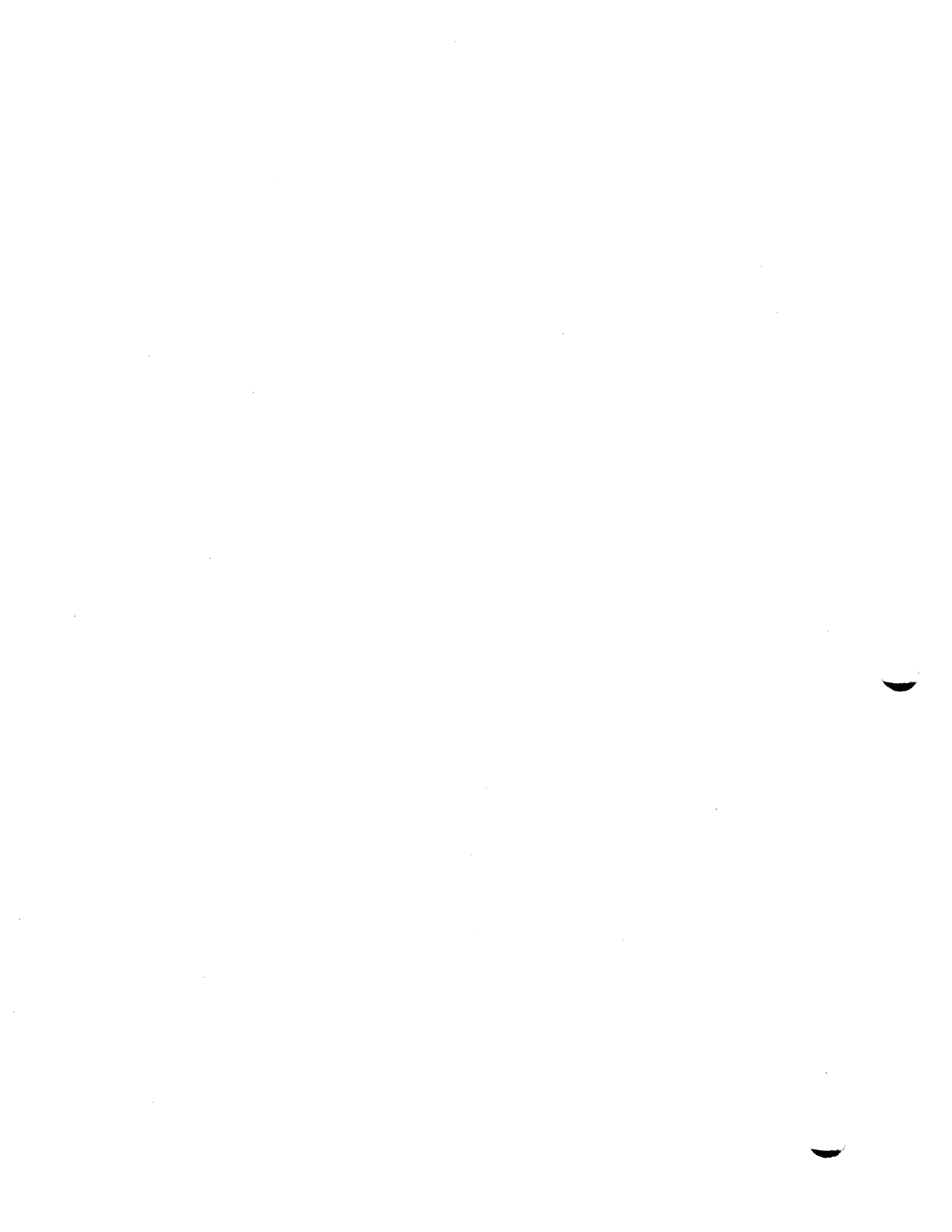
The prosecutor has the right to appeal any Parole Board decision granting parole to a state prison inmate: Board is not required to provide the prosecutor with a statement of reasons for release decision, but should do so in the public interest in those cases in which the prosecutor has participated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

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.



i. Written notice of the time, date, and nature of the hearing shall be provided to the parolee by personal service or by regular mail to the parolee's address of record.

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

iii. If the hearing is conducted by a hearing officer, the hearing officer shall prepare a written report which shall summarize the information provided at the hearing and the hearing officer's assessment as to whether the parolee should be returned to confinement.

(1) A copy of the written report shall be provided to the appropriate Board panel and the District Parole Supervisor.

(2) A copy of the written report shall be provided to the parolee in order that the parolee may comment on the report by submitting written comments to the Board panel. Comments shall be forwarded to the Board panel within seven days after receipt of the hearing officer's written report.

iv. Within 21 days of the hearing, the appropriate Board panel shall issue a written decision to the parolee which shall include the decision of the Board panel and the particular reasons for the decision and the facts relied on, except information classified as confidential by the Board pursuant to N.J.A.C. 10A:71-2.1.

2. Nothing in this subsection shall be construed to limit the authority of the Board, the appropriate Board panel or any parole officer to address a violation of a condition of parole pursuant to N.J.S.A. 30:4-123.60 through 30:4-123.65 and N.J.A.C. 10A:71-7.

(o) An inmate placed on medical parole shall be subject to the custody, supervision and conditions as provided in N.J.S.A. 30:4-123.59 and N.J.A.C. 10A:71-6.1(a), 6.2, 6.4(a), (d) and (e), 6.6 and 6.7.

(p) An inmate placed on medical parole shall be subject to sanctions for a violation of a condition of parole as provided in N.J.S.A. 30:4-123.60 through 30:4-123.65 and N.J.A.C. 10A:71-7.

(q) The denial of a request for medical parole or the return of a parolee to confinement pursuant to (n) or (p) above shall not preclude the inmate from being eligible for parole consideration pursuant to N.J.S.A. 30:4-123.51(a).

New Rule, R.1998 d.391, effective August 3, 1998.
See: 30 N.J.R. 1176(a), 30 N.J.R. 2920(a).

10A:71-3.54 Rules of supervision for mandatory release cases

(a) Pursuant to N.J.S.A. 2C:43-7.2(a) (No Early Release Act), a court imposing a sentence of incarceration for a crime of the first or second degree shall fix a minimum term of 85 percent of the sentence during which the offender shall not be eligible for parole if the crime is a violent crime as defined in N.J.S.A. 2C:7-2(d).

(b) Pursuant to N.J.S.A. 2C:43-7.2(c), in addition to the sentence of incarceration, with a minimum period of parole ineligibility of 85 percent, the court is required to impose a five-year term of parole supervision if the offender is being sentenced for a crime of the first degree, or a three-year term of parole supervision if the offender is being sentenced for a crime of the second degree.

(c) Pursuant to N.J.S.A. 2C:43-7.2(c), the term of parole supervision shall commence upon the completion of the sentence of incarceration imposed by the court unless the offender is serving a sentence of incarceration for another crime at the time the offender completes the sentence of incarceration. In such case, the term of parole supervision shall commence immediately upon the offender being released from incarceration.

(d) Pursuant to N.J.S.A. 30:4-123.51b(a), an offender who has been sentenced to a term of parole supervision and is on release status in the community shall, during the term of parole supervision, remain on release status in the community, in the legal custody of the Commissioner. The offender shall be supervised by the Bureau of Parole, as if on parole, and shall be subject to the provisions and conditions established pursuant to (e) below.

(e) Prior to release of an adult inmate at the expiration of the term of incarceration imposed pursuant to N.J.S.A. 2C:43-7.2, the Board panel or Board, as appropriate, shall issue a written certificate which shall be delivered to the adult inmate.

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

2. The certificate shall also include as general conditions of supervision the following conditions:

i. Refrain from any contact, verbal, written or through a third party with the victim(s) of the offense or the victim's relatives unless contact is authorized by the assigned parole officer or contact is authorized by the appropriate court;

ii. Refrain from any contact, verbal, written or through a third party with a co-defendant involved in the commission of the offense.

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

4. Responsibility for the delivery of the certificate shall rest with the designated representative of the Bureau of Parole or the Board, as appropriate.

5. At the time of delivery of the certificate, the conditions of supervision shall be explained to the inmate.

(f) The inmate shall be required to acknowledge in writing receipt of the certificate. If the inmate refuses to acknowledge in writing receipt of the certificate, the designated representative of the Bureau of Parole or Board, as appropriate, shall make a written record of the delivery of the certificate and the refusal of the inmate to acknowledge receipt of the certificate.

(g) Additional special conditions of supervision may be established pursuant to N.J.A.C. 10A:71-6.4(e).

(h) As authorized by N.J.S.A. 30:4-123.51b(a), a term of parole supervision imposed by a court pursuant to N.J.S.A. 2C:43-7.2 may be revoked and the offender returned to custody in accordance with 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 apply.

(i) If a term of parole supervision imposed by a court pursuant to N.J.S.A. 2C:43-7.2 is revoked and the offender returned to custody for violation of a condition of supervision, the offender shall be required to serve the remainder of the term in custody and shall not be eligible for parole consideration on the remainder of the term.

(j) Upon the enforcement of a warrant issued pursuant to N.J.S.A. 30:4-123.62, the offender shall not be released from confinement without the authorization of the appropriate Board panel.

(k) If an offender sentenced pursuant to N.J.S.A. 2C:43-7.2 is released on parole by a Board panel or the Board prior to the expiration of the sentence of incarceration, the conditions of supervision established pursuant to N.J.A.C. 10A:71-6.4(a) and (d) shall remain in effect, unless modified, during the service of the court imposed term of parole supervision. Further, the conditions of supervision established pursuant to (e)2 above shall be in effect on the date of parole release.

(l) If an offender sentenced pursuant to N.J.S.A. 2C:43-7.2 is also sentenced to a special sentence of community supervision for life pursuant to N.J.S.A. 2C:43-6.4 and if the offender is released on parole by a Board panel or the Board prior to the expiration of the sentence of incarceration, the conditions of supervision shall include, in addition to those conditions established pursuant to N.J.A.C. 10A:71-6.4(a) and (d), and (e)2 above, the conditions as specified in N.J.A.C. 10A:71-6.11(b), (c), (e), (f) and (g), as appropriate.

New Rule, R.1998 d.391, effective August 3, 1998.
See: 30 N.J.R. 1176(a), 30 N.J.R. 2920(a).

SUBCHAPTER 4. APPEALS

10A:71-4.1 Requests by inmates for reconsideration

(a) Any action by a hearing officer, a Board member, a Board panel or the Board shall be appealable to the body rendering the original decision provided one of the following criteria is met:

1. The hearing officer, Board member, Board panel or Board was presented with inaccurate information, and such information substantially affected the decision being appealed.

2. Significant information which was not considered warrants review of the decision being appealed. Such information may include, among other things, serious instances of medical, personal or family emergency.

3. The hearing officer or a Board member has failed to comply with the Board's professional code of conduct.

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

10A:71-4.2 Appeals by inmates

(a) Any denial of parole by the special county, young adult or adult Board panel shall be appealable to the Board provided one of the following criteria is met:

1. The Board panel failed to consider material facts.

2. In the case of an inmate serving a sentence for an offense committed prior to August 19, 1997, the Board panel failed to document that a preponderance of the evidence indicates a substantial likelihood that the inmate will commit a crime if released on parole.

3. In the case of an inmate serving a sentence for an offense committed on or after August 19, 1997, the Board panel failed to document that a preponderance of the evidence indicates that:

i. The inmate has failed to cooperate in his or her own rehabilitation; or

ii. 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.

4. The Board panel's decision is contrary to written Board policy or procedure.

5. A Board member participating in the deliberations or disposition of the case has a demonstrable personal interest or demonstrated prejudice or bias in the case which affected the decision.

6. A Board member participating in the deliberations or disposition of the case has failed to comply with the Board's professional code of conduct.

(b) Any failure to grant parole to a juvenile inmate by a Board member shall be appealable to the juvenile Board panel, or any failure to grant parole by the juvenile Board panel shall be appealable to the Board provided one of the following criteria is met:

1. The Board member or juvenile Board panel failed to consider material facts indicating that the juvenile inmate, if released, will not cause injury to persons or substantial injury to property.

2. The Board member or juvenile Board panel's decision is contrary to written Board policy or procedure.

3. A Board member participating in the deliberations or disposition of the case has a demonstrable personal interest or demonstrated prejudice or bias in the case which affected the decision.

4. A Board member participating in the deliberations or disposition of the case has failed to comply with the Board's professional code of conduct.

(c) Any conditions of parole or pre-parole requirements established by a Board member or a Board panel shall be appealable to the appropriate Board panel or the Board, respectively, provided one of the following criteria is met:

1. The condition of parole or pre-parole requirement will impose an undue hardship on the parolee or inmate.

2. The condition of parole or pre-parole requirement cannot be fulfilled by the parolee or inmate due to circumstances beyond the parolee's or inmate's control.

3. The condition of parole or pre-parole requirement will not reasonably reduce the likelihood of recurrence of criminal or delinquent behavior.

4. A Board member has failed to comply with the Board's professional code of conduct.

(d) Any rescission of parole release date by a Board panel shall be appealable to the Board provided one of the following criteria is met:

1. The hearing officer or Board panel failed to consider material facts or failed to document that preponderance of the evidence indicates a substantial likelihood that the inmate will commit a crime if released on parole;

2. The Board panel's decision is contrary to written Board policy or procedure;

3. A Board member participating in the deliberations or disposition of the case has a demonstrable personal interest in the case which affected the decision.

4. A Board member has failed to comply with the Board's professional code of conduct.

(e) Any revocation of parole by a Board panel shall be appealable to the Board provided one of the following criteria is met:

1. The Board panel failed to consider material facts or failed to document that clear and convincing evidence indicates that the parolee has seriously or persistently violated the conditions of parole.

2. The Board panel failed to demonstrate, in the case of a parolee revoked for other than new criminal convictions, that revocation of parole is desirable.

3. The Board panel's decision is contrary to written Board policy or procedure.

4. A Board member has failed to comply with the Board's professional code of conduct.

(f) The specific application of Board schedules pursuant to N.J.A.C. 10A:71-3.3, 3.4, 3.21, 3.23, 3.24, 7.16, 7.16A or 7.16B shall be appealable to the Board or the appropriate Board panel, provided one of the following criteria is met:

1. The specific application is contrary to written Board policy or procedure or established Board practice.

2. The specific application violates statutory restrictions pursuant to N.J.S.A. 30:4-123.51 or N.J.S.A. 30:4-123.64.

3. The Board panel or hearing officer failed to provide adequate reasons for a decision outside established guidelines.

4. In the case of an institutional infraction considered pursuant to N.J.A.C. 10A:71-3.4, the inmate has been convicted and sentenced or adjudicated delinquent and committed for the specific incident which resulted in the institutional infraction.

5. A hearing officer or Board member has failed to comply with the Board's professional code of conduct.

(g) The computation of a parole eligibility date by the Board's staff shall be appealable to the Chairperson provided one of the following criteria is met:

1. The computation of the parole eligibility date is contrary to Board practice or procedure.

2. The computation of the parole eligibility date does not correctly reflect credits awarded by the sentencing court or earned work and/or minimum custody credits awarded by the Department.

3. The computation of the parole eligibility date is based upon inaccurate sentencing information.

4. A staff member has failed to comply with the Board's professional code of conduct.

(h) A decision not to refer a parolee's case for an assessment as to whether the parolee is indigent and whether an attorney shall be assigned from the list maintained in accordance with R.3:27-2 to represent the parolee at a preliminary hearing or parole revocation hearing conducted pursuant to N.J.A.C. 10A:71-7.7 and 7.14 respectively shall be appealable 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).

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

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

Added (i).

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

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

Changed N.J.A.C. cites at (h).

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 (f), inserted additional N.J.A.C. reference.
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 of 2, inserted a new 3, and recodified former 3 through 5 as 4 through 6.

Case Notes

Death of victim was not appropriate basis to deny parole to prisoner convicted of reckless manslaughter. *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.

Parole Board could not rely on "gut" reaction to justify denial of parole. *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.

Parole Board panel decision was final determination of board for purposes of review. *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.

For parole board's finding of substantial likelihood as to whether inmate will commit another crime if paroled to be sustained, finding must be supported by credible evidence in whole record. *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.

Absent sufficient evidence that there was substantial likelihood that inmate will commit another offense after parole, denial of parole is arbitrary and capricious. *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.

Review of denial of parole by board based on arbitrary and capricious standard. *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:71-4.3 Appellate procedure

(a) All appeals submitted pursuant to N.J.A.C. 10A:71-4.1 and 4.2 shall be filed in writing and within 180 days of written notice of action or decision being received by the inmate and shall contain the reasons for the appeal and the criteria under which the appeal is submitted.

(b) Appeals filed by inmates shall be considered by the Board panel, Board or Chairperson, as appropriate, within 45 days of the date the appeal was received.

(c) The Chairperson or Board panel member shall notify the inmate in writing of the decision within 14 days of such decision.

(d) The Board panel, Board or Chairperson, as appropriate, may affirm, modify or reverse the decision being appealed, or may remand the case to the Board's staff, hearing officer, Board member or Board panel for further consideration.

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

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

10A:71-4.4 Review of hearing officer, Board member or Board panel decisions

(a) A Board panel may, upon its own motion for good cause, reconsider any decision to grant, deny or revoke parole.

(b) A Board member who participated as a hearing officer or Board panel member in a case may request that the Board review any decision of the Board panel on such case.

1. Such a request may be made provided one of the following criteria is met:

i. The Board panel decision is clearly contrary to written Board policy or procedure or established Board practice.

ii. In the case of an inmate serving a sentence for an offense committed prior to August 19, 1997, the Board panel failed to consider material facts or failed to document that a preponderance of the evidence indicates a substantial likelihood that the inmate will commit a crime if released on parole.

iii. In the case of inmate serving a sentence for an offense committed on or after August 19, 1997, the Board panel failed to consider material facts or failed to document that a preponderance of the evidence indicates that:

(1) The inmate has failed to cooperate in his or her own rehabilitation; or

(2) 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.

iv. The Board panel failed to consider material facts or failed to document that clear and convincing evidence indicates the parolee has seriously or consistently violated the conditions of parole.

v. The Board panel failed to demonstrate, in the case of a parolee revoked for other than criminal convictions, that revocation of parole is desirable.

vi. A Board member failed to comply with the Board's professional code of conduct.

2. Such request shall be made by stating the reasons therefor in writing to the Chairperson. A copy of such request shall be forwarded to the inmate and the chief executive officer of the institution where the inmate is housed.

3. Such request shall be made within seven days from the date of issuance of the Board panel's decision.

4. The Chairperson shall schedule a meeting of the Board to consider such request within 45 days from the date the request was received.

5. The Chairperson shall advise the inmate and the chief executive officer of the institution where the inmate is housed in writing of the decision of the Board within 14 days of the decision.

(c) The Board may, upon the request of at least two Board members for good cause, review the decision of any hearing officer, Board member or Board panel.

1. Such request shall be made by stating the reason therefor in writing to the Chairperson. A copy of such request shall be forwarded to the inmate and the chief executive officer of the institution of incarceration.

2. Such request shall be made within 14 days from the date of issuance of the decision being reviewed.

3. The Chairperson shall schedule a meeting of the Board to consider such request within 45 days from the date the request was received.

4. The Chairperson shall advise the inmate and the chief executive officer of the institution of incarceration in writing of the decision of the Board within 14 days of the decision.

(d) Any parole release date established shall be suspended by the Chairperson pending review by the Board if such date occurs prior to the Board's scheduled review pursuant to this section.

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.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)1, added "In the case of an inmate serving a sentence for an offense committed prior to August 19, 1997," at the beginning of ii, inserted a new iii, and recodified former iii through v as iv through vi.

SUBCHAPTER 5. SUSPENDING OR RESCINDING A PAROLE RELEASE DATE

10A:71-5.1 Suspension of a parole release date

(a) Any suspension by the Chairperson or a designated representative of a parole release date shall act to prohibit the release of the inmate by the Department or Commission on the original parole release date unless such suspension is subsequently vacated.

(b) Immediately upon suspension of a parole release date, the inmate, the chief executive officer of the institution of incarceration and the Bureau of Parole shall be notified in writing of such suspension and the reasons therefor.

(c) If such suspension is subsequently vacated, the inmate, the chief executive officer of the institution of incarceration and the Bureau of Parole shall be immediately

notified in writing and the inmate shall be released on the original parole release date or as soon thereafter as is practicable.

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

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

Text added in (a): "Any suspension by the Chairperson or a designated representative".

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 Commission.

10A:71-5.2 Approval and acceptance of parole plan

(a) If a parole plan has not been approved prior to parole release by the Board member or members certifying parole release, the inmate's parole release date shall be suspended by such Board member or members pending approval of a parole plan.

(b) If a parole plan has not been accepted by the appropriate supervisory agency, the inmate's parole release date shall be suspended by a designated representative of the Board, Bureau of Parole or Commission pending acceptance of a parole plan. If such suspension exceeds 60 days from the parole release date, the Bureau of Parole or the Commission, as appropriate, shall advise the Board in writing as to the reasons for the failure to approve or accept a parole plan.

(c) Upon the Board receiving notification from the Bureau of Parole or the Commission, as appropriate, of the failure to approve or accept a parole plan, the Board member or members certifying parole release shall review the inmate's case, evaluate the reasons for the failure to approve or accept a parole plan, and determine if further action is appropriate.

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

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

(b) and (c) 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 (b), in the first sentence, inserted reference to the Board and to the Commission, and in the second sentence, inserted reference to the Commission; and in (c), inserted reference to the Commission.

10A:71-5.3 Alteration of parole eligibility

(a) If, by reason of an additional parole eligibility term which is aggregated pursuant to N.J.A.C. 10A:71-3.2, an inmate's parole eligibility date is altered, such parole release date shall be suspended.

(b) If an inmate receives an additional sentence as a young adult offender, any parole release date shall be suspended pending consideration of whether a new primary parole eligibility date should be established pursuant to N.J.A.C. 10A:71-3.3 and 5.5. If a new primary parole eligibility date is established, the original parole release date shall be suspended.

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.1995 d.109, effective February 21, 1995.

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

10A:71-5.4 Pre-release conditions

(a) If the Board member or members certifying parole release have established pre-release conditions and an inmate has failed to satisfactorily fulfill such conditions, the inmate's parole release date shall be suspended by such Board member or members.

(b) Upon suspension of the parole release date, the Chairperson shall schedule a hearing before the appropriate Board panel to determine whether such pre-release condition should be amended or eliminated or whether the inmate should be denied parole.

10A:71-5.5 Rescinding a parole release date

(a) The appropriate Board panel may rescind a parole release date at any time prior to such date if facts, circumstances or conditions are brought to the attention of the Board panel which may indicate that parole release pursuant to N.J.S.A. 30:4-123.53 should not have been certified.

(b) It shall be the responsibility of the chief executive officer of the institution of incarceration to promptly provide the Board panel with any significant information not previously considered which may be pertinent to the case of any inmate granted parole release, including but not limited to the details of any institutional infraction committed by such inmate.

Case Notes

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. 170, 373 A.2d 446 (Ch.Div.1977).

10A:71-5.6 Parole rescission hearing; scheduling

(a) Upon the receipt of additional relevant information which may form a basis for parole rescission, the Board panel shall schedule a rescission hearing before the Board panel or a hearing officer.

(b) The purpose of the rescission hearing shall be to determine whether, due to circumstances of an institutional infraction committed by such inmate and/or due to circumstances of the inmate's case which were not previously considered, there is good cause for the Board panel to reconsider the prior determination certifying parole release.

(c) Upon the initiation of the rescission hearing process, the parole release date shall be suspended for a period of not more than 60 days, and within said time period, a rescission hearing shall be conducted unless the inmate requests a postponement of the rescission hearing.

(d) If the inmate requests a postponement of the rescission hearing, the postponement shall be granted by the hearing officer or Board panel. Such request shall be made in writing and shall be made a part of the inmate's case record.

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

Case Notes

Matters not previously considered or properly weighed can justify agency reassessment of a determination; restitution may be ordered by Parole Board as a condition for parole of an inmate convicted of homicide; amount of restitution is to be fixed by the sentencing court at the Parole Board's request. In re Trantino Parole Application, 89 N.J. 347, 446 A.2d 104 (1982).

10A:71-5.7 Parole rescission hearing; notice of hearing

(a) Upon the initiation of the rescission hearing process, the Board panel shall provide the inmate with written notification of the reasons for the hearing, the purpose of the hearing and the information and material to be considered at the hearing, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or the rules and regulations of the Department or Commission.

(b) Such notification shall inform the inmate of the following rights to which he or she shall be entitled at the rescission 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 be represented by an attorney or other qualified person.
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 in accordance with N.J.A.C. 10A:71-2.4.

5. The right to present documentary evidence and any other relevant material or information to the hearing officer.

6. The right to confront and cross-examine adverse witnesses upon request, unless the hearing officer determines that such witnesses would be subjected to risk of harm.

7. The right to waive such hearing.

8. 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.

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.

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. 170, 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 for-

warded 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 Chief of the Bureau 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.

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, aggravated sexual assault, sexual assault, aggravated criminal sexual contact, 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. The parolee and the Board shall be given written notice upon the imposition of such additional conditions.

1. 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).

2. 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.

3. 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.

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).

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 Chief of the Bureau 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".

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, 7.15 and 7.16, 7.16A or 7.16B.

(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) 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.

(d) 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.

(e) 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.

(f) If discharge is granted, the appropriate Board panel shall issue a discharge certificate on the parolee.

(g) 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).

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.

(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.

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 Chief of the Bureau 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 Chief of the Bureau 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 Chief of the Bureau 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 Chief of the Bureau 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".

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 emergency 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 Chief of the Bureau 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.

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 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) 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.

(c) 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.

(d) 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".

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 Board panel, upon review of the preliminary hearing Notice of Decision, may modify or overrule the determinations of the preliminary hearing officer.

(e) Except as provided herein, upon revocation of parole, an adult inmate shall serve eight months, a young adult inmate shall serve six months and a juvenile inmate shall serve four months, if the inmate has violated, by non-criminal conduct, parole condition N.J.A.C. 10A:71-6.4(a)1.

(f) The future parole eligibility date required pursuant to (e) above may be decreased or increased by up to three months in the case of an adult inmate or by up to two months in the case of a young adult or juvenile inmate when, in the opinion of a two-member Board panel pursuant to (o) or (p) below, the circumstances of the parole violation and the characteristics and past record of the parolee warrant such adjustment.

(g) Except as provided in this section, upon revocation of parole, an adult inmate revoked for commission of a crime while on parole shall serve as follows:

1. Except as provided in (h) and (q) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for commission of a fourth degree crime shall serve less than eight nor more than 12 months.

2. Except as provided in (h) and (q) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for commission of a third degree crime shall serve less than 12 nor more than 16 months.

3. Except as provided in (h) and (q) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for commission of a second degree crime shall serve less than 16 nor more than 28 months.

4. Except as provided in (h) and (q) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for commission of a first degree crime shall serve less than 28 nor more than 48 months.

5. Except as provided in (h) and (q) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for the commission of the crimes of murder or kidnapping shall serve less than four years, eight months nor more than eight years, four months.

6. Upon the second or subsequent revocation of parole, an adult inmate revoked for commission of a crime while on parole shall serve whatever time remains on the maximum sentence(s) or 10 years whichever is less.

(h) Except as provided in this section, upon a two-member adult Board panel determining that an adult inmate shall serve a future parole eligibility term upon revocation of parole, the two-member adult Board panel shall establish such terms as follows:

1. The two-member adult Board panel shall establish the following:

i. A term of 10 months for the commission of a fourth degree crime;

ii. A term of 14 months for the commission of a third degree crime;

iii. A term of 22 months for the commission of a second degree crime;

iv. A term of 38 months for the commission of a first degree crime; and

v. A term of six years, six months for the commission of the crime of murder or kidnapping.

2. The term established may be decreased or increased within the limits provided by (g) above when, in the evaluation of the two member adult Board panel, the mitigating and aggravating factors as set forth in (o) and (p) below, the circumstances of the parole violation and the characteristics and past record of the parolee warrant such adjustment.

(i) Except as provided in this section, upon a two member young adult Board panel determining that a young adult inmate shall serve a future parole eligibility term upon the revocation of parole, the two-member young adult Board panel shall establish the following:

1. Except as provided in (j) and (q) below, a term of eight months for the commission of a fourth degree crime;

2. Except as provided in (j) and (q) below, a term of 10 months for the commission of a third degree crime;

3. Except as provided in (j) and (q) below, a term of 16 months for the commission of a second degree crime;

4. Except as provided in (j) and (q) below, a term of 24 months for the commission of a first degree crime; and

5. Except as provided in (j) and (q) below, a term of 30 months for the commission of the crimes of murder or kidnapping.

(j) The future parole eligibility date required pursuant to (i) above may be decreased or increased when, in the opinion of the two-member young adult Board panel pursuant to (o) or (p) below, the circumstances of the parole violation and the characteristics and past records of the parolee warrant such consideration. The increase or decrease shall be no more than the following:

1. Two months in the case of the commission of a fourth degree crime;

2. Four months in the case of the commission of a third degree crime or possession of controlled dangerous substance;

3. Six months in the case of the commission of a second degree crime, sale or distribution of controlled dangerous substance or possession of controlled dangerous substance with intent to distribute;

4. Eight months in the case of the commission of a first degree crime; and

5. Ten months in the case of the commission of the crimes of murder or kidnapping.

(k) Except as provided in this section, upon the juvenile Board panel determining that a juvenile inmate shall serve a future parole release term upon revocation of parole, the juvenile Board panel shall establish the following:

1. Except as provided in (l) and (q) below, a term of six months for the commission of a fourth degree crime or an offense which constitutes a crime of the fourth degree if committed by an adult;

2. Except as provided in (l) and (q) below, a term of eight months for the commission of a third degree crime or an offense which constitutes a crime of the third degree if committed by an adult;

3. Except as provided in (l) and (q) below, a term of 12 months for the commission of a second degree crime or an offense which constitutes a crime of the second degree if committed by an adult;

4. Except as provided in (l) and (q) below, a term of 16 months for the commission of a first degree crime or an offense which constitutes a crime of the first degree if committed by an adult; and

5. Except as provided in (l) and (q) below, a term of 20 months for the commission of the crime of murder or kidnapping or an offense which constitutes the crime of murder or kidnapping if committed by an adult.

(l) The future parole release term required pursuant to (k) above may be decreased or increased when in the opinion of the juvenile Board panel, pursuant to (o) or (p) below, the circumstances of the parole violation and the characteristics and past record of the parolee warrant such consideration. The decrease or increase shall be no more than the following:

1. Two months in the case of the commission of a fourth degree crime or an offense which constitutes a crime of the fourth degree if committed by an adult;

2. Four months in the case of the commission of a third degree crime or an offense which constitutes a crime of the third degree if committed by an adult;

3. Six months in the case of the commission of a second degree crime or an offense which constitutes a crime of the second degree if committed by an adult;

4. Eight months in the case of the commission of a first degree crime or an offense which constitutes a crime of the first degree if committed by an adult; and

5. Ten months in the case of the crime of murder or kidnapping or an offense which constitutes the crime of murder or kidnapping if committed by an adult.

(m) Except as provided in this section, an inmate, upon the revocation of parole for the commission of a crime while on parole, shall serve at least six months or that portion of the custodial term remaining, whichever is less.

(n) In no case shall a future parole eligibility date established pursuant to (b), (c), (d), (e), (f), (g), (h), (i), (j) above or the future parole release date established pursuant to (k) and (l) above be greater than the balance of the custodial term remaining.

(o) A two-member Board panel may decrease, pursuant to (d), (f), (h)2 or (j) above, the future parole eligibility date required pursuant to (b), (c), (e), (g), (h)1 or (l) above, or decrease pursuant to (l) above, the future parole release date required pursuant to (k) above if the two-member Board panel determines that one or more of the following mitigating factors is present:

1. The parolee has demonstrated a positive attitude to parole supervision.

2. The parolee was employed on a full-time basis.

3. The parolee's living arrangement was stable and supportive.

4. The parolee was under parole supervision for a period of at least two years.

5. The parolee has previously adjusted successfully to parole supervision.

6. The parolee has no previous convictions.

7. The parolee's original sentence was for a non-violent offense.

(p) A two-member Board panel may increase, pursuant to (d), (f), (h)2 or (j) above, the future parole eligibility date required pursuant to (b), (c), (e), (g), (h)1, or (i) above, or increase pursuant to (l) above, the future parole release date required pursuant to (k) above, if the two member Board panel determines that one or more of the following aggravating factors is present:

1. The parolee has demonstrated a negative attitude to parole supervision.

2. The parolee was under parole supervision for a period of less than six months.

3. The parolee has previous parole failures.

4. The parolee has extensive prior convictions.

5. The parolee has violated more than one parole condition.

6. The parolee was guilty of substance abuse while on parole.

7. The parolee's original sentence was for a violent offense.

(q) A three-member Board panel may establish a future parole eligibility date which differs from that otherwise required by the provisions of this section if the future parole eligibility date or, in the case of a juvenile inmate, a future parole release date, which would otherwise be established pursuant to this section is clearly inappropriate in consideration of the circumstances of the parole violation and the characteristics and prior criminal record of the parolee.

1. If, in the opinion of a two-member Board panel revoking parole, the future parole eligibility date or, in the case of a juvenile inmate, the future parole release date which would otherwise be established pursuant to this section is clearly inappropriate as provided in this section, the two-member Board panel shall refer such case for a three-member Board panel review for the purpose of establishing a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date.

i. In such instances, the third Board panel member shall review the record.

2. The two-member Board panel shall notify the inmate and the inmate's attorney, in writing, pursuant to N.J.A.C. 10A:71-7.17 that a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date, pursuant to this section has not been established and the reasons therefor and that a three member Board panel review of the record will be scheduled.

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

4. The three-member Board panel shall, upon disposition of the case, state in writing to the inmate and the inmate's attorney the reasons for the establishment of a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date which differs from that otherwise required by the provisions of this section.

5. The decision of the three-member Board panel to establish a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date, which differs from that required the provisions of this section shall be by unanimous decision only. Failure to reach an unanimous decision shall result in the referral of the inmate's case to the Board for the establishment of a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date.

6. If the three-member Board panel fails to reach an unanimous decision, the three-member Board panel shall notify the inmate and the inmate's attorney, in writing, that his case has been referred to the Board for the establishment of a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date.

7. The inmate and/or the inmate's attorney shall have 30 days from the date notice is received pursuant to (q)6 above to prepare and submit a written statement containing any additional information which the inmate and/or the inmate's attorney 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 or, in the case of a juvenile inmate, a future parole release date shall be based on the review of the record. Upon disposition of the case, the Board shall state in writing to the inmate and the inmate's attorney the reasons for the establishment of a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date, which differs from that otherwise required by the provisions of this section.

(r) Any future parole eligibility term determined pursuant to this section shall commence on the date the parolee was returned to custody as a parole violator, unless otherwise determined as a result of a court imposing a sentence for a crime committed while on parole.

(s) In the case of a county inmate who has been granted parole and whose parole has been revoked, the inmate shall not be credited for any time served on parole and shall not be eligible for parole consideration on the remainder of the original county sentence.

(t) If an inmate's maximum sentence will expire prior to the parole release date that could be established pursuant to (a)2 above, the future parole eligibility date that could be established pursuant to (b), (c), (d), (e), (f), (g), (h), (i), (j) above or the future parole release date that could be established pursuant to (k) or (l) above, the appropriate Board panel may direct that such inmate serve his or her maximum sentence and not be eligible for parole consideration on the balance of the maximum sentence.

New Rule, R.1994 d.511, effective October 17, 1994.

See: 26 N.J.R. 2516(a), 26 N.J.R. 4191(a).

Administrative Correction.

See: 26 N.J.R. 4771(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 (c)1, substituted "designated representative of the Commission to" for "District Parole Supervisor".

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)1, changed N.J.A.C. reference.

10A:71-7.16B Board panel action; schedule of future parole eligibility dates upon revocation of parole for inmates who violated parole on or after December 4, 1995

(a) This section applies to inmates who violated parole on or after December 4, 1995. After consideration of the hearing officer's hearing summary and opinion and any

written exceptions thereto, a two-member Board panel shall determine whether to revoke parole pursuant to N.J.A.C. 10A:71-7.12. The Board panel members shall not receive or consider any ex parte communication. The parolee's case shall be decided on the basis of the established record.

1. If parole is not revoked, the two-member Board panel shall authorize the release of the parolee, if in custody, and may modify the conditions of parole or establish appropriate special parole conditions.

2. If parole is revoked in the case of an adult or young adult parolee based on the violation of any parole condition except N.J.A.C. 10A:71-6.4(a)1 and (a)6, the two-member Board panel may certify parole release by:

i. Establishing a specific parole release date which shall be no later than nine months from the date an adult parolee was placed in custody on a parole warrant or six months from the date a young adult parolee was placed in custody on a parole warrant; and

ii. Establishing appropriate pre-release conditions; and/or

iii. Establishing appropriate special parole conditions.

3. Except as provided in this section, if parole is revoked by the two-member Board panel and parole release is not certified pursuant to (a)2 above, an adult inmate shall serve 12 months, a young adult inmate shall serve nine months, and a juvenile inmate shall serve six months if the inmate has violated one of the following conditions of parole:

i. Failure to report to the parole officer, N.J.A.C. 10A:71-6.4(a)2, provided that such parolee is declared by the District Parole Supervisor or the designated representative of the Commission, as appropriate, to be missing from parole supervision;

ii. Failure to notify the parole officer immediately upon the issuance 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. Failure 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, N.J.A.C. 10A:71-6.4(a)4;

iii. Owning or possessing any firearm, as defined in N.J.S.A. 2C:39-1f, for any purpose, N.J.A.C. 10A:71-6.4(a)6;

iv. Owning or possessing any weapon enumerated in N.J.S.A. 2C:39-1r, N.J.A.C. 10A:71-6.4(a)7;

v. Failure 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, N.J.A.C. 10A:71-6.4(a)8; or

vi. Failure to comply with any special condition of parole imposed pursuant to N.J.A.C. 10A:71-6.4(d) or (e).

(b) The future parole eligibility date established pursuant to (a)3 above may be decreased or increased by up to three months when, in the opinion of the two-member Board panel pursuant to (m) or (n) below, the circumstances of the parole violation and the characteristics and past record of the parolee warrant such adjustment.

(c) Except as provided in this section, upon revocation of parole, an adult inmate shall serve eight months, a young adult inmate shall serve six months and a juvenile inmate shall serve four months; if the inmate has violated, by non-criminal conduct, parole condition N.J.A.C. 10A:71-6.4(a)1 or any parole condition not specified under (a)3 above.

(d) The future parole eligibility date established pursuant to (c) above may be decreased or increased by up to three months in the case of an adult inmate or by up to two months in the case of a young adult or juvenile inmate when, in the opinion of a two-member Board panel pursuant to (m) or (n) below, the circumstances of the parole violation and the characteristics and past record of the parolee warrant such adjustment.

(e) Except as provided in this section, upon revocation of parole, an adult inmate revoked for commission of a crime while on parole shall serve as follows:

1. Except as provided in (f) and (o) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for commission of a fourth degree crime shall serve less than eight nor more than 12 months.

2. Except as provided in (f) and (o) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for commission of a third degree crime shall serve less than 12 nor more than 16 months.

3. Except as provided in (f) and (o) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for commission of a second degree crime shall serve less than 16 nor more than 28 months.

4. Except as provided in (f) and (o) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for commission of a first degree crime shall serve less than 28 nor more than 48 months.

5. Except as provided in (f) and (o) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for commission of the crimes of murder or kidnapping shall serve less than four years, eight months nor more than eight years, four months.

6. Upon the second or subsequent revocation of parole, an adult inmate revoked for commission of a crime while on parole shall serve whatever time remains on the maximum sentence(s) or 10 years whichever is less.

(f) Except as provided in this section, upon a two-member adult Board panel determining that an adult inmate shall serve a future parole eligibility term upon revocation of parole, the two-member adult Board panel shall establish such terms as follows:

1. The two-member adult Board panel shall establish the following:

i. A term of 10 months for the commission of a fourth degree crime;

ii. A term of 14 months for the commission of a third degree crime;

iii. A term of 22 months for the commission of a second degree crime;

iv. A term of 38 months for the commission of a first degree crime; and

v. A term of six years, six months for the commission of the crime of murder or kidnapping.

2. The term established may be decreased or increased within the limits provided by (e) above when, in the evaluation of the two-member adult Board panel, the mitigating and aggravating factors as set forth in (m) and (n) below, the circumstances of the parole violation and the characteristics and past record of the parolee warrant such adjustment.

(g) Except as provided in this section, upon a two-member young adult Board panel determining that a young adult inmate shall serve a future parole eligibility term upon the revocation of parole, the two-member young adult Board panel shall establish the following:

1. Except as provided in (h) and (o) below, a term of eight months for the commission of a fourth degree crime;

2. Except as provided in (h) and (o) below, a term of 10 months for the commission of a third degree crime;

3. Except as provided in (h) and (o) below, a term of 16 months for the commission of a second degree crime;

4. Except as provided in (h) and (o) below, a term of 24 months for the commission of a first degree crime; and

5. Except as provided in (h) and (o) below, a term of 30 months for the commission of the crimes of murder or kidnapping.

(h) The future parole eligibility date required pursuant to (g) above may be decreased or increased when, in the opinion of the two-member young adult Board panel pursu-

ant to (m) or (n) below, the circumstances of the parole violation and the characteristics and past records of the parolee warrant such consideration. The increase or decrease shall be no more than the following:

1. Two months in the case of the commission of a fourth degree crime;

2. Four months in the case of the commission of a third degree crime or possession of controlled dangerous substance;

3. Six months in the case of the commission of a second degree crime, sale or distribution of controlled dangerous substance or possession of controlled dangerous substance with intent to distribute;

4. Eight months in the case of the commission of a first degree crime; and

5. Ten months in the case of the commission of the crimes of murder or kidnapping.

(i) Except as provided in this section, upon the juvenile Board panel determining that a juvenile inmate shall serve a future parole release term upon revocation of parole, the juvenile Board panel shall establish the following:

1. Except as provided in (j) and (o) below, a term of six months for the commission of a fourth degree crime or an offense which constitutes a crime of the fourth degree if committed by an adult;

2. Except as provided in (j) and (o) below, a term of eight months for the commission of a third degree crime or an offense which constitutes a crime of the third degree if committed by an adult;

3. Except as provided in (j) and (o) below, a term of 12 months for the commission of a second degree crime or an offense which constitutes a crime of the second degree if committed by an adult;

4. Except as provided in (j) and (o) below, a term of 16 months for the commission of a first degree crime or an offense which constitutes a crime of the first degree if committed by an adult; and

5. Except as provided in (j) and (o) below, a term of 20 months for the commission of the crime of murder or kidnapping or an offense which constitutes the crime of murder or kidnapping if committed by an adult.

(j) The future parole release term required pursuant to (i) above may be decreased or increased when in the opinion of the juvenile Board panel, pursuant to (m) or (n) below, the circumstances of the parole violation and the characteristics and past record of the parolee warrant such consideration. The decrease or increase shall be no more than the following:

1. Two months in the case of the commission of a fourth degree crime or an offense which constitutes a crime of the fourth degree if committed by an adult;

2. Four months in the case of the commission of a third degree crime or an offense which constitutes a crime of the third degree if committed by an adult;

3. Six months in the case of the commission of a second degree crime or an offense which constitutes a crime of the second degree if committed by an adult;

4. Eight months in the case of the commission of a first degree crime or an offense which constitutes a crime of the first degree if committed by an adult; and

5. Ten months in the case of the crime of murder or kidnapping or an offense which constitutes the crime of murder or kidnapping if committed by an adult.

(k) Except as provided in this section, an inmate, upon the revocation of parole for the commission of a crime while on parole, shall serve at least six months or that portion of the custodial term remaining whichever, is less.

(l) In no case shall a future parole eligibility date established pursuant to (a), (b), (c), (d), (e), (f), (g) and (h) above or the future parole release date established pursuant to (i) and (j) above be greater than the balance of the custodial term remaining.

(m) A two-member Board panel may decrease, pursuant to (b), (d), (f)2 or (h) above, the future parole eligibility date required pursuant to (a)3, (c), (f)1 or (g) above, or decrease pursuant to (j) above, the future parole release date required pursuant to (i) above if the two-member Board panel determines that one or more of the following mitigating factors is present:

1. The parolee has demonstrated a positive attitude to parole supervision;
2. The parolee was employed on a full-time basis;
3. The parolee's living arrangement was stable and supportive;
4. The parolee was under parole supervision for a period of at least two years;
5. The parolee has previously adjusted successfully to parole supervision;
6. The parolee has no previous convictions; and/or
7. The parolee's original sentence was for a non-violent offense.

(n) A two-member Board panel may increase, pursuant to (b), (d), (f)2 or (h) above, the future parole eligibility date required pursuant to (a)3, (c), (f)1 or (g) above, or increase pursuant to (j) above, the future parole release date required pursuant to (i) above, if the two-member Board panel determines that one or more of the following aggravating factors is present:

1. The parolee has demonstrated a negative attitude to parole supervision;

2. The parolee was under parole supervision for a period of less than six months;

3. The parolee has previous parole failures;

4. The parolee has extensive prior convictions;

5. The parolee has violated more than one parole condition;

6. The parolee was guilty of substance abuse while on parole; and/or

7. The parolee's original sentence was for a violent offense.

(o) A three-member Board panel may establish a future parole eligibility date which differs from that otherwise required by the provisions of this section if the future parole eligibility date or, in the case of a juvenile inmate, a future parole release date, which would otherwise be established pursuant to this section, is clearly inappropriate in consideration of the circumstances of the parole violation and the characteristics and prior criminal record of the parolee.

1. If, in the opinion of a two-member Board panel revoking parole, the future parole eligibility date or, in the case of a juvenile inmate, the future parole release date which would otherwise be established pursuant to this section is clearly inappropriate as provided in this section, the two-member Board panel shall refer such case for a three-member Board panel review for the purpose of establishing a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date.

i. In such instances, the third Board panel member shall review the record.

2. The two-member Board panel shall notify the inmate and the inmate's attorney, in writing, pursuant to N.J.A.C. 10A:71-7.17 that a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date, pursuant to this section has not been established and the reasons therefor and that a three-member Board panel review of the record will be scheduled.

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

4. The three-member Board panel shall, upon disposition of the case, state in writing to the inmate and the inmate's attorney the reasons for the establishment of a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date which differs from that otherwise required by the provisions of this section.

5. The decision of the three-member Board panel to establish a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date, which differs from that required by the provisions of this section shall be by unanimous decision only. Failure to reach an unanimous decision shall result in the referral of the inmate's case to the Board for the establishment of a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date.

6. If the three-member Board panel fails to reach an unanimous decision, the three-member Board panel shall notify the inmate and the inmate's attorney, in writing, that his or her case has been referred to the Board for the establishment of a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date.

7. The inmate and/or the inmate's attorney shall have 30 days from the date notice is received pursuant to (o)6 above to prepare and submit a written statement containing any additional information which the inmate and/or the inmate's attorney 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 or, in the case of a juvenile inmate, a future parole release date shall be based on the review of the record. Upon disposition of the case, the Board shall state in writing to the inmate and the inmate's attorney the reasons for the establishment of a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date, which differs from that otherwise required by the provisions of this section.

(p) Any future parole eligibility term determined pursuant to this section shall commence on the date the parolee was returned to custody as a parole violator, unless otherwise determined as a result of a court imposing a sentence for a crime committed while on parole.

(q) In the case of a county inmate who has been granted parole and whose parole has been revoked, the inmate shall not be credited for any time served on parole and shall not be eligible for parole consideration on the remainder of the original county sentence.

(r) If an inmate's maximum sentence will expire prior to the parole release date that could be established pursuant to (a)2 above, the future parole eligibility date that could be established pursuant to (a)3, (b), (c), (d), (f), (g) or (h) above or the future parole release date that could be established pursuant to (i) or (j) above, the appropriate Board panel may direct that such inmate serve his or her maximum sentence and not be eligible for parole consideration on the balance of the maximum sentence.

New Rule, 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)3i, inserted reference to a designated representative of the Commission.

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)2 and 3, changed N.J.A.C. references throughout.

10A:71-7.17 Revocation hearing; notice of decision

(a) Within 21 days of the revocation hearing, the appropriate Board panel shall issue a written Notice of Decision to the parolee and the parolee's attorney, the District Parole Supervisor or designated representative of the Commission, as appropriate, the Department or Commission, as appropriate, and the Board.

(b) Such Notice of Decision shall consist of:

1. The decision of the Board panel;
2. The particular reasons for the decision and the facts relied upon, except information classified as confidential by the Board pursuant to N.J.A.C. 10A:71-2.1; and
3. The future parole eligibility date established pursuant to N.J.A.C. 10A:71-7.16, 7.16A or 7.16B.

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 "and the parolee's attorney".

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 and to the Commission; and in (b)3, inserted additional N.J.A.C. references.

10A:71-7.18 Adult diagnostic and treatment center examination for sex offenders

(a) If a parolee has been sentenced and paroled under provisions of the "Sex Offender Act," N.J.S.A. 2A:164-3 et seq., or N.J.S.A. 2C:47-1 et seq., and if the adult Board panel has revoked parole, a request for a complete examination, containing a copy of the hearing summary of the revocation hearing and the adult Board panel's Notice of Decision, shall be forwarded to the chief executive officer of the Adult Diagnostic and Treatment Center.

(b) The adult Board panel, in cooperation with the chief executive officer of the Adult Diagnostic and Treatment Center, shall schedule such examination and forward written notice of the date, time and place of such examination to the parolee and the parolee's attorney and, when the parolee is in custody, to the chief executive officer of the institution of incarceration.

(c) Such examination shall be for the purpose of determining whether the violation(s) of the parole conditions reflects emotional or behavioral problems as a sex offender, evidence that the parolee is incapable of making an acceptable social adjustment in the community, and the necessity for continued custodial supervision and further specialized treatment as a sex offender.

(d) As soon as practicable upon completion of such examination, it shall be the responsibility of the chief executive officer of the Adult Diagnostic and Treatment Center to forward a written report of such examination to the adult Board panel.

(e) As soon as practicable upon completion of such examination, it shall be the responsibility of the chief executive officer of the Adult Diagnostic and Treatment Center to forward a written report of such examination to the prison Board panel.

(f) The adult Board panel shall forward a copy of such report to the parolee's attorney, or directly to the parolee where he or she has appeared pro se, provided said report is not classified as confidential by the rules and regulations of the Department, in order that the parolee or his or her attorney may object or comment on the report by submitting written exceptions. Such exceptions shall be forwarded to the adult Board panel within a reasonable period of time after the receipt of the report.

(g) If the Adult Diagnostic and Treatment Center staff determines that the following conditions exist, then the adult Board panel shall, if it concurs with the report, vacate its revocation of parole and release the inmate on parole as soon as practicable:

1. That the parolee's conduct does not reflect emotional or behavioral problems as a sex offender;
2. That there is no evidence that the parolee is incapable of making an acceptable social adjustment in the community; and
3. That the parolee's condition does not warrant continued custodial supervision and further specialized treatment as a sex offender.

(h) If the Adult Diagnostic and Treatment Center staff determines that the following conditions exist, the adult Board panel shall affirm the revocation of parole:

1. That the parolee's conduct does reflect emotional or behavioral problems as a sex offender;
2. That there is evidence that the parolee is incapable of making an acceptable social adjustment in the community; and
3. That the parolee's condition does warrant continued custodial supervision and further specialized treatment as a sex offender.

(i) An inmate who has had his parole revoked and who remains confined under the provisions of the "Sex Offender Act" shall be considered for parole by the adult Board panel upon the recommendation by the Special Classification Review Board that the inmate is capable of making an acceptable social adjustment in the community.

Amended by R.1980 d.434, effective October 7, 1980.

See: 12 N.J.R. 537(a), 12 N.J.R. 665(a).

(h) added.

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.1990 d.257, effective May 21, 1990.

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

In (a): deleted "psychiatric" from description of complete examination.

10A:71-7.18A Adult Diagnostic and Treatment Center examination for sex offenders; place of confinement; future parole eligibility

(a) This section applies to offenders who were sentenced to confinement in the Adult Diagnostic and Treatment Center under N.J.S.A. 2C:47-1 et seq. for an offense committed on or after December 1, 1998; who were paroled under the provisions of N.J.S.A. 2C:47-5(a); and who violate parole.

(b) If the adult Board panel has revoked parole, a request for a complete psychological examination, containing a copy of the hearing summary of the revocation hearing and the adult Board panel's Notice of Decision, shall be forwarded to the chief executive officer of the Adult Diagnostic and Treatment Center.

(c) The adult Board panel, in cooperation with the chief executive officer of the Adult Diagnostic and Treatment Center, shall schedule such examination and forward written notice of the date, time and place of such examination to the inmate and the inmate's attorney and to the chief executive officer of the institution in which the inmate is confined.

(d) Such examination shall be for the purpose of determining whether the violation(s) of the parole conditions reflects emotional or behavioral problems as a sex offender that cause the offender to be incapable of making any acceptable social adjustment in the community and, if so, to determine further the inmate's amenability to sex offender treatment and, if amenable, the inmate's willingness to participate in such treatment.

(e) No more than 30 days after the date of the examination, the chief executive officer of the Adult Diagnostic and Treatment Center shall forward a written report of the results of the examination to the adult Board panel.

(f) The adult Board panel shall forward a copy of such report to the inmate's attorney, or directly to the inmate where he or she has appeared pro se, provided said report is not classified as confidential by the rules of the Department, in order that the inmate or his or her attorney may object or comment on the report by submitting written exceptions. Such exceptions shall be forwarded to the adult Board panel within a reasonable period of time after the receipt of the report.

(g) Upon review of the report of the examination conducted pursuant to (b), (c) and (d) above and any exceptions to the report submitted by the inmate or the inmate's attorney, the adult Board panel shall determine whether to affirm the revocation of the inmate's parole. The inmate shall be notified in writing of the decision of the adult Board panel. Such notice shall also inform the inmate whether future parole eligibility will be pursuant to N.J.S.A. 2C:47-5(a) or N.J.S.A. 30:4-123.45 et seq. and any future parole eligibility date established pursuant to (h) below.

(h) The adult Board panel shall establish a future parole eligibility date pursuant to N.J.A.C. 10A:71-7.16B if the adult Board panel affirms the revocation of parole and if the report of the examination conducted pursuant to (b), (c) and (d) above reveals that the inmate's violation(s) of the parole conditions:

1. Does not reflect emotional or behavioral problems as a sex offender; or
2. Reflects emotional or behavioral problems as a sex offender that cause the inmate to be incapable of making any acceptable social adjustment in the community and further reveals that the inmate is not amenable to sex offender treatment.

(i) The offender shall be confined in the Adult Diagnostic and Treatment Center if the report of the examination conducted pursuant to (b), (c) and (d) above reveals that the inmate's violation(s) of the parole conditions reflects emotional or behavioral problems as a sex offender that cause the inmate to be incapable of making any acceptable social adjustment in the community and further reveals that the inmate is amenable to sex offender treatment and is willing to participate in such treatment. The inmate shall be eligible for parole pursuant to the provisions of N.J.S.A. 2C:47-5(a).

(j) The inmate shall be confined in a facility designated by the Commissioner pursuant to N.J.S.A. 30:4-91.2 if the report of the examination conducted pursuant to (b), (c) and (d) above reveals that the inmate's violation(s) of the parole conditions reflects emotional or behavioral problems as a sex offender that cause the inmate to be incapable of making any acceptable social adjustment in the community and further reveals that the inmate is amenable to sex offender treatment, but is not willing to participate in such treatment. The inmate shall be eligible for parole pursuant to the provisions of N.J.S.A. 2C:47-5(a).

(k) The inmate shall be confined in a facility designated by the Commissioner pursuant to N.J.S.A. 30:4-91.2 if the report of the examination conducted pursuant to (b), (c) and (d) above reveals that the inmate's violation(s) of the parole conditions:

1. Does not reflect emotional or behavioral problems as a sex offender; or

2. Reflects emotional or behavioral problems as a sex offender that cause the inmate to be incapable of making any acceptable social adjustment in the community and further reveals that the inmate is not amenable to sex offender treatment.

(l) An inmate confined pursuant to (k)1 or 2 above shall be eligible for parole pursuant to the provisions of N.J.S.A. 30:4-123.45 et seq. However, a parole eligibility date established pursuant to N.J.A.C. 10A:71-7.16B or a future parole eligibility date established pursuant to N.J.A.C. 10A:71-3.21 shall not 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.

(m) If an inmate is confined pursuant to (j) or (k)2 above, the inmate may, on a biennial basis, request to be transferred to the Adult Diagnostic and Treatment Center. Within 90 days after receiving a request for transfer, the Department shall conduct a psychological examination. If, upon the completion of a psychological examination, the Department determines that the inmate is amenable to sex offender treatment and is willing to participate in such treatment, the Commissioner shall order the inmate to be transferred to the Adult Diagnostic and Treatment Center as soon as practicable. Upon being transferred to the Adult Diagnostic and Treatment Center, the inmate shall be eligible for parole pursuant to N.J.S.A. 2C:47-5(a).

(n) The provisions of this section shall apply to an inmate who was confined pursuant to (k)1 or 2 above; who was subsequently paroled pursuant to N.J.S.A. 30:4-123.45 et seq., and who, thereafter, violates parole.

New Rule, R.1999 d.189, effective June 7, 1999.
See: 31 N.J.R. 710(a), 31 N.J.R. 1490(a).

10A:71-7.19 Withdrawal of parole warrants

(a) When a warrant for the arrest of a parolee is withdrawn, such warrant shall be immediately cancelled. Such cancellation shall not alter any forfeiture of time pursuant to N.J.S.A. 30:4-123.65.

(b) If the Board panel determines that a parole warrant was issued in error, upon withdrawal of such warrant the warrant shall be rescinded. Such rescission shall eliminate any forfeiture of time pursuant to N.J.S.A. 30:4-123.65.

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

10A:71-7.20 Revenue cases

(a) For violation of a condition of parole requiring the payment of any assessment, fine, penalty, lab fee or restitution, the appropriate Board panel shall revoke parole only for failure or refusal by the parolee to make a good faith effort to make such payment.

(b) If a Board panel revokes parole pursuant to (a) above, the Board panel shall determine the length of time to be served; however, the term shall not exceed one day for each \$20.00 of the fine or penalty or restitution, nor 40 days if the fine or penalty or restitution was imposed upon a disorderly persons offense, nor 25 days if the fine or penalty or restitution was imposed for a petty disorderly persons offense nor one year in any case, whichever is the shorter period.

(c) In cases where a parolee has violated a condition of parole requiring payment of restitution and such condition was imposed pursuant to N.J.A.C. 10A:71-6.5, the Board panel may suspend the condition, modify the payment schedule or request the sentencing court to reduce the amount of restitution. If none of these alternatives is warranted, the Board panel, upon revoking parole, may impose a term of incarceration 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).

Added (c).

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

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

SUBCHAPTER 8. CERTIFICATE OF GOOD CONDUCT

10A:71-8.1 Definition

(a) The Certificate of Good Conduct is a document issued by the Board to assist the rehabilitation of convicted offenders by removing impediments and restrictions upon their ability to obtain proposed employment.

(b) The Certificate of Good Conduct does not imply pardon and under no circumstances is it to be construed as forgiving, absolving or mitigating the offense(s).

(c) Issuance of a Certificate of Good Conduct pursuant to N.J.S.A. 2A:168A-1, et seq. precludes a licensing authority, as defined in N.J.S.A. 2A:168A-2, from disqualifying or discriminating against the applicant because of any conviction for a crime unless N.J.S.A. 2C:51-2 is applicable.

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

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

Substituted "2C:51-2" for "2A:93-5".

10A:71-8.2 Eligibility

(a) An application for a Certificate of Good Conduct shall not be entertained unless the applicant meets all of the following requirements:

1. The applicant previously was paroled by the Board.

2. If the applicant is presently on parole, at least one year must have expired since release to parole supervision.

3. The applicant is not presently incarcerated.

4. At least two years have passed since the date any similar application was denied, unless the Board determines that significant information exists which provides a basis for a waiver of this limitation.

Amended by R.1994 d.273, effective June 6, 1994.

See: 26 N.J.R. 1193(a), 26 N.J.R. 2287(a).

10A:71-8.3 Procedure

(a) The applicant shall apply to the Board for a Certificate of Good Conduct on forms prescribed and furnished by the Board.

(b) Upon receipt of the application, the Board shall initiate a confidential investigation which shall contain all pertinent information, with particular reference to the need the applicant has for the use he or she expects to make of the certificate.

(c) The applicant shall be required to furnish all documentary evidence required by the Board, except as herein provided.

(d) The applicant shall have the right to restrict the Board's investigation. In such a case, the Board's investigator shall note in his or her report the limitations placed on the inquiry by the applicant, and the Board shall evaluate such limitations when considering the application.

10A:71-8.4 Criteria

The Board shall evaluate the application on the basis of the applicant having achieved a degree of rehabilitation indicating that his or her engaging in the proposed employment would not be incompatible with the welfare of society.

10A:71-8.5 Notification

(a) The Board shall notify the applicant of its decision within 30 days of the date the application was considered.

(b) A copy of the Certificate of Good Conduct, if granted, shall be filed with the Secretary of State.

10A:71-8.6 Revocation of Certificate of Good Conduct

The Board may revoke a Certificate of Good Conduct for good cause.

10A:71-8.7 Board action

The Board shall grant a revoke of Certificate of Good Conduct by majority vote of its members.