

**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(i), 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.

i. When an inmate committed to the Adult Diagnostic and Treatment Center is transferred out of the Adult Diagnostic and Treatment Center by order of the Commissioner pursuant to N.J.S.A. 2C:47-4(b), the inmate shall be eligible for parole consideration pursuant to (c)1, 2, 3 or 5 above as appropriate.

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 has not been transferred out of the Adult Diagnostic and Treatment Center pursuant to N.J.S.A. 2C:47-4(b), 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 pursuant to N.J.S.A. 2C:47-1, et seq.

(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.

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).

#### Law Review and Journal Commentaries

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

#### Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRESUMPTIVE PRIMARY ELIGIBILITY DATES (MONTHS)  
LENGTH OF INDETERMINATE TERM  
(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.

**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) When inmates are sentenced to the Adult Diagnostic and Treatment Center pursuant to N.J.S.A. 2A:164-3 et seq., or when inmates are sentenced to and housed at the Adult Diagnostic and Treatment Center pursuant to N.J.S.A. 2C:47-5, the Board panel shall determine whether the inmate, if released, is capable of making an acceptable social adjustment in the community.

(d) 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) above.

(e) 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).

#### **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 concede the following factors and, in addition, may consider only 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.

#### **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.

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

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

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

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

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

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

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

1. Except as provided herein, a prison inmate serving a sentence for murder, manslaughter, aggravated sexual assault or kidnapping or serving any minimum-maximum or specific sentence in excess of 14 years for a crime not otherwise assigned pursuant to this section shall serve 27 additional months.
2. Except as provided herein, a prison inmate serving a sentence for armed robbery or robbery or serving any minimum-maximum or specific sentence between eight and 14 years for a crime not otherwise assigned pursuant to this section shall serve 23 additional months.
3. Except as provided herein, a prison inmate serving a sentence for burglary, narcotic law violations, theft, arson or aggravated assault or serving any minimum-

maximum or specific sentence of at least four but less than eight years for a crime not otherwise assigned pursuant to this section shall serve 20 additional months.

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

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

1. Except as provided herein, a young adult inmate serving a sentence for a crime contained in Categories A or B of N.J.A.C. 10A:71-3.3 shall serve 24 additional months.
2. Except as provided herein, a young adult inmate serving a sentence for a crime contained in Category C of N.J.A.C. 10A:71-3.3 shall serve 20 additional months.
3. Except as provided herein, a young adult inmate serving a sentence for a crime contained in Category D of N.J.A.C. 10A:71-3.3 shall serve 16 additional months.
4. Except as provided herein, a young adult inmate serving a sentence for a crime contained in Category E of N.J.A.C. 10A:71-3.3 shall serve 12 additional months.
5. Except as provided herein, a young adult inmate serving a sentence for a crime contained in Category F of N.J.A.C. 10A:71-3.3 shall serve 10 additional months.
6. Except as provided herein, a young adult inmate serving a sentence for a crime contained in Category G of N.J.A.C. 10A:71-3.3 shall serve eight additional months.

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

(d) A three-member Board panel may establish a future parole eligibility date which differs from that required by the provisions of (a) or (b) and (c) above if the future parole eligibility date which would be established pursuant to such subsections is clearly inappropriate in consideration of the circumstances of the crime, the characteristics and prior criminal record of the inmate and the inmate's institutional behavior.

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

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

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

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

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

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

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

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

(e) The Board, upon the conclusion of a hearing conducted pursuant to N.J.A.C. 10A:71-3.18(c), may establish a future parole eligibility date which differs from that required by the provisions of (a) or (b) and (c) above if the future

parole eligibility date which would be established pursuant to such subsections is clearly inappropriate in consideration of the circumstances of the crime, the characteristics and prior criminal record of the inmate and the inmate's institutional behavior.

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

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

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

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

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

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

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

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

v. Continue the case until the next annual review.

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

4. If the Board panel determines that the inmate's case shall be referred for a parole release hearing pursuant to this subchapter, the Board panel shall provide

personal notice to each member of the three-member Board panel or the Board, as appropriate, of its determination.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section substantially amended.

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

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

Substituted "within 18" for "12".

Administrative correction to (b)3.

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Added tentative release.

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

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

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

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

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

## 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.

(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) 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.

(g) 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).

#### 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".

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:71-7.19 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.