

CHAPTER 72
DIVISION OF PAROLE

Authority

N.J.S.A. 30:4-123.48.d, 30:4-123.51.b, and 30:4-123.92.d.

Source and Effective Date

R.2014 d.013, effective December 5, 2013.
See: 45 N.J.R. 1337(a), 46 N.J.R. 79(b).

Chapter Expiration Date

Chapter 72, Division of Parole, expires on December 5, 2020.

Chapter Historical Note

Former Chapter 26, Bureau of Parole, was adopted as R.1995 d.85, effective February 6, 1995. See: 26 N.J.R. 4143(a), 27 N.J.R. 550(a). Pursuant to Executive Order No. 66(1978), Chapter 26 expired on February 6, 2000.

Former Chapter 26, Division of Parole, was adopted as new rules by R.2000 d.504, effective December 18, 2000. See: 31 N.J.R. 4205(a), 32 N.J.R. 4465(b).

Chapter 72, Division of Parole, Subchapters 1 through 8, were recodified from Chapter 26, Division of Parole, and Subchapter 9, Volunteers in Parole Program (V.I.P.P.), was recodified from N.J.A.C. 10A:17-3.3 through 3.16, by administrative change. See: 34 N.J.R. 1918(a).

Subchapter 2, Community Plan and Supervision; and Subchapter 9, Volunteers in Parole Program (V.I.P.P.), were adopted as new rules by R.2004 d.446, effective December 6, 2004. See: 36 N.J.R. 2136(a), 36 N.J.R. 5359(a).

Chapter 72, Division of Parole, was readopted as R.2006 d.256, effective June 15, 2006. See: 38 N.J.R. 100(a), 38 N.J.R. 3033(a).

Subchapter 3, Polygraph Examination of Sex Offenders, was adopted as new rules by R.2011 d.252, effective November 21, 2011. See: 43 N.J.R. 121(a), 43 N.J.R. 3087(a).

Subchapter 6, Search and Urine Monitoring of Parolees and Inmates, was renamed Search and Urine Monitoring of Parolees; Subchapter 8, Transportation of Parolees and Inmates in Custody, was renamed Transportation of Parolees in Custody; and Subchapter 10, Curfew and Electronic Monitoring, was adopted as new rules by R.2011 d.291, effective December 5, 2011. See: 43 N.J.R. 1408(a), 43 N.J.R. 3184(a).

Subchapter 11, Sex Offender Global Positioning System (GPS) Monitoring Program, was adopted as new rules by R.2012 d.201, effective December 17, 2012. See: 44 N.J.R. 2098(a), 44 N.J.R. 3069(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 72, Division of Parole, was scheduled to expire on June 15, 2013. See: 43 N.J.R. 1203(a).

Chapter 72, Division of Parole, was readopted as R.2014 d.013, effective December 5, 2013. As a part of R.2014 d.013, Subchapter 4, Use of Force While On-Duty, was renamed Use of Firearms and Use of Force While On-Duty; and Subchapter 12, Travel Outside the State of New Jersey, and Subchapter 13, Parolee Contract Agreement, were adopted as new rules, effective January 6, 2014. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS**10A:72-1.1 Definitions**

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

“Central Communications Unit” means the centralized communication center within the Department of Corrections which coordinates communication functions of the Division of Parole on a 24-hour, seven day a week basis.

“Chemical agent” means an aerosol spray which may be used to gain control of individuals who resist arrest or for the purpose of self-defense against an attack.

“Community supervision for life” as established in N.J.S.A. 2C:43-6.4, means a court imposed sentence of community supervision commenced upon completion of sentence, supervised as if on parole on a person who has been convicted of aggravated sexual assault, sexual assault, aggravated criminal sexual contact, kidnapping pursuant to paragraph (2) of subsection c of N.J.S.A. 2C:13-1, endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child pursuant to subsection a of N.J.S.A. 2C:24-4, luring, or an attempt to commit any such offense. Rules regarding community supervision for life are established at N.J.A.C. 10A:71-6.11.

“Contraband” means any item, article or material found in the possession of, or under the control of, a parolee that is prohibited by conditions of parole and/or community release, or that is prohibited by the Criminal Code of the State of New Jersey.

“Deadly force” means force which is intended to cause, or is likely to cause, death or serious bodily harm.

“Detainer” means a warrant or formal authorization to detain or apprehend a parolee for prosecution or detention by a Federal, State or local law enforcement agency. Detainers may include, but are not limited to:

1. Adjudicated criminal charges for which sentence has been imposed;
2. Criminal charges resulting from indictment, for which there is no final disposition (open charges);
3. Warrants for violation of parole or probation or executive clemency; and
4. Immigration detainees.

“Division of Parole” means the division within the State Parole Board responsible for the supervision of adult and juvenile offenders released on parole by the State Parole Board from an adult correctional facility; the supervision of offenders who are serving a mandatory period of parole supervision pursuant to N.J.S.A. 2C:43-7.2(c); the supervision of offenders under parole supervision from other states

who have been accepted under the terms of the Interstate Compact for Adult Offender Supervision; the supervision of offenders sentenced to community supervision for life; the supervision of offenders sentenced to parole supervision for life; the supervision of juvenile offenders released from an adult correctional facility for the service of a term of post-incarceration; and the supervision of certain Executive Clemency cases.

"Firearm" means any hand gun, rifle, shotgun, machine gun, automatic or semi-automatic rifle, or any gun, device or instrument in the nature of a weapon from which may be fired or ejected any solid projectable ball, slug, pellet, missile or bullet, or any gas, vapor or other noxious thing, by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances.

"Lawfully confined" means custodially confined in a detention facility or county correctional facility or a Department of Corrections' facility.

"Mechanical restraints" means restraining devices such as handcuffs, leg irons, and belly chains.

"Non-deadly force" means force used by the parole officer which is not likely to cause death or serious bodily harm.

"Parole officer" means persons with the following Division of Parole titles that shall be sworn as peace officers:

1. Director, Division of Parole;
2. Assistant Director, Division of Parole;
3. Supervising Parole Officer;
4. District Parole Supervisor;
5. Assistant District Parole Supervisor;
6. Senior Parole Officer; and
7. Parole Officer Recruit.

"Parole supervision for life" as established in N.J.S.A. 2C:43-6.4, means a court imposed sentence of parole supervision on a person who has been convicted of aggravated sexual assault, sexual assault, aggravated criminal sexual contact, kidnapping pursuant to N.J.S.A. 2C:13-1.c(2), endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child pursuant to N.J.S.A. 2C:24-4.a, endangering the welfare of a child pursuant to N.J.S.A. 2C:24-4.b(3), luring, or an attempt to commit any such offense. Rules regarding parole supervision for life are established at N.J.A.C. 10A:71-6.12.

"Parolee" means any person who is subject to the parole jurisdiction of the New Jersey State Parole Board and has been released on parole; any person released to mandatory parole supervision pursuant to N.J.S.A. 2C:43-7.2(c); any person placed under supervision by reason of Executive Clemency; or any person released from another state correc-

tional facility who resides in New Jersey under the terms of the Adult and Juvenile Compacts for the Supervision of Parolee and Probationers.

"Probable cause" means reasonable ground(s) of suspicion, supported by circumstances sufficiently strong to warrant a cautious person to believe that criminal activity is taking place.

"Reasonable suspicion" means a belief that an action is necessary based upon specific and articulable facts that, taken together with rational inferences from those facts, reasonably support a conclusion such as that a condition of parole has been or is being violated by a parolee.

"Serious bodily harm" means bodily harm which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

"Unlawful force" means force, including confinement, which is employed without the consent of the person against whom it is directed and the use of which is not permitted by law.

"Warrant" means a writ or precept from an authority in pursuance of law, directing the performance of a specified act, and addressed to a peace officer or person competent to perform the act.

"Weapon" means anything readily capable of lethal use or of inflicting serious bodily injury.

Amended by R.2004 d.446, effective December 6, 2004.
See: 36 N.J.R. 2136(a), 36 N.J.R. 5359(a).

Rewrote the section.
Amended by R.2006 d.256, effective July 17, 2006.
See: 38 N.J.R. 100(a), 38 N.J.R. 3033(a).

Rewrote definition "Division of Parole".
Amended by R.2011 d.291, effective December 5, 2011.
See: 43 N.J.R. 1408(a), 43 N.J.R. 3184(a).

In definition "Contraband", substituted "a parolee that" for "an inmate or parolee which" and the second occurrence of "that" for the second occurrence of "which"; in the introductory paragraph of definition "Detainer", substituted "a" for "an inmate or" preceding "parolee"; rewrote definition "Division of Parole", deleted definition "Electronic Monitoring Program (EMP)"; and in paragraph 2 of definition "Parole officer", substituted "Director" for "Directors".
Recodified from N.J.A.C. 10A:72-1.3 and amended by R.2014 d.013, effective January 6, 2014.

See: 45 N.J.R. 1337(a), 46 N.J.R. 79(b).

Added definition "Parole supervision for life". Former N.J.A.C. 10A:72-1.1, Purpose, repealed.

Case Notes

Parole officer had reasonable suspicion that there was contraband in plainly visible brown paper bag in defendant's bedroom, and therefore search of bag did not violate constitutional guarantees against unreasonable searches and seizures, where defendant said she was going to retrieve court documents from bedroom, became nervous as officer approached bedroom, and lied by saying her sister's baby was not inside, and where officer saw crumpled brown paper bag which she knew was a common container for illegal drugs. *State v. Maples*, 346 N.J. Super. 408, 788 A.2d 314.

10A:72-1.2 Procedures

(a) The Director, Division of Parole, or designee shall be responsible for developing written procedures consistent with this chapter.

(b) All written procedures shall be submitted to the Board for review and approval.

(c) Written procedures developed in accordance with this chapter shall be made available to all parole officers and parole staff members.

Recodified from N.J.A.C. 10A:72-1.5 and amended by R.2004 d.446, effective December 6, 2004.

See: 36 N.J.R. 2136(a), 36 N.J.R. 5359(a).

Former N.J.A.C. 10A:72-1.4, Forms, repealed.

Recodified from N.J.A.C. 10A:72-1.4 by R.2014 d.013, effective January 6, 2014.

See: 45 N.J.R. 1337(a), 46 N.J.R. 79(b).

Former N.J.A.C. 10A:72-1.2, Scope, repealed.

10A:72-1.3 (Reserved)

Recodified to N.J.A.C. 10A:72-1.1 by R.2014 d.013, effective January 6, 2014.

See: 45 N.J.R. 1337(a), 46 N.J.R. 79(b).

Section was "Definitions".

10A:72-1.4 (Reserved)

Recodified to N.J.A.C. 10A:72-1.2 by R.2014 d.013, effective January 6, 2014.

See: 45 N.J.R. 1337(a), 46 N.J.R. 79(b).

Section was "Procedures".

10A:72-1.5 (Reserved)

Recodified to N.J.A.C. 10A:72-1.4 by R.2004 d.446, effective December 6, 2004.

See: 36 N.J.R. 2136(a), 36 N.J.R. 5359(a).

SUBCHAPTER 2. COMMUNITY PLAN AND SUPERVISION

10A:72-2.1 Investigation of community release

(a) Prior to parole release, each inmate must submit a proposed parole residence plan to the appropriate Board staff person.

(b) Upon the proposed parole residence plan being provided to the appropriate District Parole Office, the District Parole Supervisor shall assign a parole officer to investigate the plan.

(c) The purpose of the investigation is to ensure that the inmate has a suitable residence upon his or her release to the community.

(d) The parole officer assigned to complete the investigation shall perform the following tasks:

1. Verify, in person, that the residence location is a valid address;

2. Verify, in person, that the host person or family is willing to provide housing and food for the inmate;

3. Determine whether acceptance of the inmate in the residence would not be a violation of any law, rule or regulation prohibiting a person with a criminal conviction from residing at the proposed residence plan;

4. Determine whether the host person or family is willing to cooperate with parole supervision;

5. Determine whether the host person or family is willing to comply with the parole officer's law enforcement authority and to comply with any search initiated pursuant to N.J.A.C. 10A:72-6;

6. Advise, in writing, all interested law enforcement authorities of the proposed parole residence plan;

7. Prepare a written report which shall include:

i. A list of any outstanding warrants;

ii. Any recommendation(s) for any special conditions that the parole officer believes will assist the parolee in making a successful reintegration into the community; and

iii. The parole officer's recommendation as to the suitability of the inmate residing at the proposed parole residence; and

8. Submit the written report to the appropriate Panel.

Amended by R.2011 d.291, effective December 5, 2011.

See: 43 N.J.R. 1408(a), 43 N.J.R. 3184(a).

In (d)5, updated the N.J.A.C. reference.

10A:72-2.2 Parole supervision status

(a) Each parolee shall be assigned a level of supervision appropriate to maintain public safety, reduce the likelihood of recidivism and to ensure the parolee's positive reintegration into the community.

(b) The assigned parole officer, in coordination with his or her immediate supervisor, shall, at the first visit reporting session, determine, unless otherwise specified by a Board panel or the Board, the level of parole supervision for each parolee.

(c) The assigned parole officer shall immediately review instances of non-compliance of a recurring or serious nature with established conditions of parole with their immediate supervisor.

1. Upon review, if it is determined, by the supervisor, that the parolee is in non-compliance with parole conditions, the supervisor shall take appropriate remedial action commensurate with the seriousness of the violation(s).

2. Upon review by the assigned parole officer and their immediate supervisor, positive and constructive improvements in the parolee's adjustment to parole supervision may result in less restrictive levels of parole supervision or a recommendation for discharge from parole supervision pursuant to N.J.A.C. 10A:71-6.9. Thereafter, the level of parole supervision shall be periodically evaluated.

10A:72-2.3 Chronological Supervision Reports

(a) All contacts or events concerning the supervision of the parolee shall be recorded in the parole officer's electronic casebook, hereafter known as the Chronological Supervision Report (CSR).

(b) Each CSR must begin with a case plan agreement identifying those areas in which the parolee may need improvement. The case plan agreement shall also include a case plan detailing the efforts to be taken by the parolee and the assigned parole officer to correct deficiencies.

Amended by R.2011 d.291, effective December 5, 2011.

See: 43 N.J.R. 1408(a), 43 N.J.R. 3184(a).

In (a), inserted "electronic"; and in (b), substituted "case plan agreement" for "Problem Statement" and "problem statement".

10A:72-2.4 Violations of parole

(a) Whenever the parole officer has a reasonable belief that the parolee has violated the conditions of parole, the parolee will receive immediate remedial counseling. If the violation is of a serious or persistent nature, the parole officer shall promptly review the parolee's case with his or her supervisor for the purpose of determining an appropriate response. Such review shall include a formal assessment of the parolee's risk to public safety and current rehabilitative needs.

(b) The response to a violation of a condition of parole shall be proportional to the risk to the community posed by the parolee, the severity of the violation and the potential for long-term positive outcomes. Responses may include, but not be limited to, the following:

1. An adjustment to the parolee's reporting status;
2. The imposition of any special condition(s) that will reduce the likelihood of recurrence of criminal or delinquent behavior; or
3. The imposition of a special condition requiring:
 - i. Assignment to and successful completion of an out-patient substance abuse treatment program or any other recommended treatment program;
 - ii. Assignment to and successful completion of the electronic monitoring program, wherein electronic monitoring serves to address violations of conditions of supervision;
 - iii. Assignment to and successful completion of a community reporting center program; or

iv. Assignment to and successful completion of a residential community-based treatment program.

(c) If the least restrictive responses in (b) above are inappropriate, refer to (d) below.

(d) The parole officer shall initiate revocation procedures pursuant to N.J.A.C. 10A:71-7.1 and 7.2 when it has been determined in consultation with the appropriate supervisor that probable cause exists that a parolee has seriously or persistently violated a condition(s) of parole and that the evidence indicates that the parolee poses a danger to public safety or poses a flight risk.

Amended by R.2011 d.291, effective December 5, 2011.

See: 43 N.J.R. 1408(a), 43 N.J.R. 3184(a).

In the introductory paragraph of (b), deleted a comma following "violation", and substituted "long-term" for "long term"; in (b)3ii, inserted "; wherein electronic monitoring serves to address violations of conditions of supervision"; and in (b)3iii, substituted "community" for "day".

10A:72-2.5 Residing with a minor child

(a) In the case of an offender sentenced to a special sentence of community or parole supervision for life and the offense committed by the offender involved a minor child, the offender may not live at a residence in which a minor child is present unless approved by the District Parole Supervisor or by the appropriate court.

(b) In the case of an offender in which the imposition of sentence is suspended and the offender is sentenced to a special sentence of parole supervision for life pursuant to N.J.S.A. 2C:43-6.4 and the offender is residing with a minor child on the date of sentence, the offender may be permitted to reside with the minor child, provided the minor child is not the victim of the offense, pending the assessment of the District Parole Supervisor pursuant to (e) below.

(c) If an offender serving a special sentence of community or parole supervision for life requests to be permitted to reside with a minor child, the parent or guardian of the minor child shall be required to provide to the District Parole Office a written statement requesting that the offender be permitted to reside with the minor child. The statement shall include an acknowledgment by the parent or guardian that the parent or guardian is familiar with the circumstances of the sexual offense committed by the offender. For the purpose of this subsection, the parent or guardian of the minor child shall be a person other than the offender.

(d) An offender requesting to reside with a minor child shall be required to submit for consideration by the District Parole Supervisor or designee the written assessment from a sex offender treatment provider designated by the District Parole Supervisor or designee who has assessed the offender and the request by the offender to reside with a minor child. The assessment shall include, but not limited to:

1. A statement as to the assessed level of risk posed by the offender to the minor child;

2. A statement as to whether or not the offender residing with the minor child is conducive to the offender's relapse prevention plan;

3. A statement as to the appropriateness of informing the minor child of the circumstances of the sexual offense committed by the offender; and

4. The recommendation of the evaluator as to the appropriateness of the offender residing with the minor child.

(e) Upon receipt of the statement required pursuant to (c) above and the assessment required pursuant to (d) above, the District Parole Supervisor or designee shall evaluate the matter and determine whether the offender shall be permitted to reside with the minor child.

(f) Upon a decision being rendered, the District Parole Supervisor or designee shall notify the offender in writing of the decision and the basis for the decision. The decision and the basis for the decision shall also be recorded in the chronological supervision report.

(g) If an offender is residing with a minor child pursuant to (b) above and the decision is rendered that the offender may not reside with the minor child, the offender shall be directed to immediately vacate the residence and to relocate to a residence deemed appropriate by the District Parole Office.

New Rule, R.2014 d.013, effective January 6, 2014.
See: 45 N.J.R. 1337(a), 46 N.J.R. 79(b).

SUBCHAPTER 3. POLYGRAPH EXAMINATION OF SEX OFFENDERS

10A:72-3.1 Authorization to administer polygraph examination

(a) Pursuant to N.J.S.A. 30:4-123.88, the Board may administer to all offenders serving a special sentence of community or parole supervision for life, imposed pursuant to N.J.S.A. 2C:43-6.4, polygraph examinations in order to obtain information necessary for risk management and treatment and to reduce the offender's denial mechanisms.

(b) A polygraph examination shall be administered pursuant to the provisions of N.J.A.C. 10A:72-3.4.

(c) Pursuant to N.J.S.A. 30:4-123.88, a polygraph examination shall be conducted by a polygraph examiner trained specifically in the use of the polygraph for the monitoring of sex offenders.

10A:72-3.2 Polygraph examination exclusions

(a) A polygraph examination shall not be administered to an offender who has been formally charged with a new criminal offense or to an offender who is under active

investigation by either a law enforcement authority or other State agency.

(b) A polygraph examination shall not be administered to an offender whose case is verified as being on direct appeal to the Superior Court-Appellate Division or Supreme Court of the State of New Jersey.

10A:72-3.3 Type of polygraph examinations

(a) An instant offense examination may be administered when either an offender denies guilt regarding the commitment offense or an offender's version of the commitment offense differs significantly from the official version of the commitment offense as noted in the pre-sentence report.

(b) A periodic maintenance examination may be administered to verify the activities, behavior and truthfulness of an offender as related to compliance with the conditions of supervision.

(c) A sexual history examination may be administered to obtain comprehensive information regarding an offender's sexual interests and behaviors in order to identify the offender's predilections and to assist in case planning and treatment objectives.

10A:72-3.4 Polygraph examination referral procedure

(a) The assigned parole officer shall review the offender's case with an Assistant District Supervisor, District Parole Supervisor, or Supervising Parole Officer for consideration of a polygraph examination, if the assigned parole officer has a reasonable belief that an offender is non-compliant with a condition(s) of supervision; if an offender denies guilt regarding the commitment offense; or if an offender's treatment provider believes that the administration of a polygraph examination would assist in the treatment or supervision of the offender. In addition, the reviewing supervisor must determine that there is a need to obtain and verify information regarding an offender's behaviors and sexual interests.

(b) The Assistant District Parole Supervisor, District Parole Supervisor or Supervising Parole Officer shall determine whether a polygraph examination be administered to the offender. If the determination is made that a polygraph examination shall be administered to the offender, the Assistant District Parole Supervisor, District Parole Supervisor or the Supervising Parole Officer shall determine the type of polygraph examination to be administered to the offender.

(c) If the determination is made that a polygraph examination shall be administered, then the District Parole Supervisor or designee shall assign the offender's case to a polygraph examiner.

(d) The assigned polygraph examiner shall review the case records in advance of the examination and may consult with the assigned parole officer, Assistant District Parole Super-

visor, District Parole Supervisor and/or treatment provider in developing appropriate examination questions.

10A:72-3.5 Notification of polygraph examination

(a) Upon the determination being rendered that a polygraph examination is to be conducted in the offender's case, the offender shall be provided 30 days notice in writing that the offender has been referred for a polygraph examination. The notice shall specify the type of polygraph examination to be administered and the basis for the polygraph examination.

(b) The notice provided pursuant to (a) above shall be accompanied by a copy of the polygraph examination disclosure form.

(c) Upon the scheduling of the polygraph examination, the offender shall be notified of the scheduled location, date and time of the examination.

10A:72-3.6 Polygraph examination disclosure form

(a) The polygraph examiner, during the pre-examination interview, shall provide the offender with a polygraph examination disclosure form.

(b) The disclosure form shall include, but not be limited to:

1. Notice to the offender regarding the scope of the examination;
2. The consequences for failure to fully participate and cooperate with the examination;
3. The consequences of the offender voluntarily providing identifying information regarding unreported victim(s) or crime(s);
4. The offender's right to remain silent as it relates to divulging identifying information of any unreported victim(s) or crime(s);
5. That the valid exercise of the right to remain silent does not constitute failure to fully participate and/or cooperate with the examination; and
6. That the results of the polygraph examination shall not be used as evidence in court to prove that a violation of the special sentence of community or parole supervision for life or condition of discharge has occurred.

10A:72-3.7 Polygraph examination procedure

(a) The polygraph examination process shall consist of a pre-examination interview, polygraph examination and post-examination interview.

(b) The polygraph examination process shall be videotaped and/or electronically recorded.

(c) The polygraph examiner shall perform a functionality or calibration test on the polygraph instrument consistent with manufacturer recommendations.

(d) During the polygraph examination process, the polygraph examiner shall comply with the procedures of the Division of Parole regarding an offender's right to remain silent as it relates to divulging identifying information of any unreported victim(s) or crime(s).

(e) The only persons authorized to be present during the polygraph examination process shall be the polygraph examiner(s), the offender, an interpreter (if deemed necessary by the polygraph examiner) and any other person deemed necessary by the examiner. The offender is not entitled to have an attorney or a personal representative present.

(f) The pre-examination interview shall consist of the following:

1. The polygraph examiner shall provide the offender with the polygraph examination disclosure form. The offender shall be directed to read the disclosure form and sign the form acknowledging a full understanding of the examination and its uses.
2. If the offender is unable to read or understand the disclosure form, then the polygraph examiner shall read the form to the offender and answer any questions that the offender has regarding the examination. Upon reading the form to the offender and answering any questions, the offender shall be requested to sign the form acknowledging a full understanding of the examination and its uses. If, after further explanation by the polygraph examiner, the offender continues to indicate that he or she does not understand the nature and purpose of the polygraph examination or if the offender refuses to fully cooperate or participate in the examination, then the polygraph examiner shall review the matter with the District Parole Supervisor to determine if the polygraph examination should proceed.
3. If the offender refuses to sign the disclosure form, the polygraph examiner shall note the offender's refusal at the bottom of the form. In addition, the polygraph examiner shall record in writing the basis for the offender's refusal to sign the disclosure form.
4. The polygraph examiner shall specifically inquire of the offender whether the offender is currently receiving or has in the past received medical, psychological or psychiatric treatment or consultation. If a polygraph examiner has a reasonable doubt concerning the ability of an offender to safely undergo an examination, a release from the offender and treating physician or advanced practice nurse is required.
5. The polygraph examiner shall discuss in detail with the offender the subject matter of the examination, each issue to be tested, a complete explanation of the instrumentation being utilized and a discussion regarding the natural

anxiety that is normal, expected and compensated for during a polygraph examination.

6. The polygraph examiner, based upon the discussion with the offender, may elect to administer a periodic maintenance examination, in lieu of a scheduled instant offense examination.

7. The polygraph examiner shall develop questions to be presented during the polygraph examination.

(g) The polygraph examination shall consist of the polygraph examiner soliciting responses from the offender to the examination questions developed during the pre-examination interview.

(h) The post-examination interview shall consist of the following:

1. The polygraph examiner shall immediately analyze the charts reflecting the physiological responses generated during the polygraph examination.

2. The polygraph examiner shall review the test results with the offender, advise the offender of any significant, deceptive or inconclusive response to a polygraph examination question and provide the offender the opportunity to explain or resolve any significant, deceptive or inconclusive response.

3. The offender shall be required to remain in the designated polygraph examination location until the polygraph examiner elects to terminate the polygraph examination process.

10A:72-3.8 Polygraph examination report

(a) The polygraph examiner shall provide immediate verbal notification to the District Parole Supervisor or designated representative of any significant findings, conclusions and/or admissions made during the polygraph examination process.

(b) The polygraph examiner shall prepare a written polygraph examination report detailing the results of the examination and areas of concern and submit the examination report to the District Parole Supervisor within 10 business days of the conclusion of the examination.

10A:72-3.9 Review of polygraph examination report

(a) The District Parole Supervisor, upon receipt of the polygraph examination report or upon verbal advisement from the polygraph examiner of any significant findings, conclusions and/or admissions, shall review the offender's case with the assigned parole officer and/or treatment provider to determine a course of action.

(b) The District Parole Supervisor or designated representative shall immediately refer in writing any voluntary admission(s) made by the offender regarding unreported victim(s) or crime(s) to the appropriate law enforcement and/or other state agency for their review and investigation.

(c) Pursuant to N.J.S.A. 30:4-123.88, the results of the polygraph examination shall not be used as evidence in court to prove that a violation of the special sentence of community or parole supervision for life or condition of discharge has occurred.

10A:72-3.10 Cost of polygraph examination

(a) Pursuant to N.J.S.A. 30:4-123.88, the cost of administering a polygraph examination shall be paid for by the offender.

(b) Upon referral for a polygraph examination, the assigned parole officer shall notify the offender in writing of the offender's obligation to pay the cost of the polygraph examination.

(c) The offender shall not be required to submit payment until the completion of the polygraph examination.

(d) If the polygraph examiner determines not to administer a polygraph examination due to an offender being deemed not suitable for a polygraph examination or due to an offender providing admissions during the pre-examination interview, the offender shall not be required to submit payment.

(e) An offender's inability to pay shall not be deemed a basis for not administering the polygraph examination.

SUBCHAPTER 4. USE OF FIREARMS AND USE OF FORCE WHILE ON-DUTY

10A:72-4.1 Parole officer authorization to carry firearm while on duty

(a) Prior to being permitted to carry a firearm on duty, a parole officer shall:

1. Pursuant to N.J.S.A. 52:17B-66 et seq., have taken and successfully completed the Police Training Commission (P.T.C.) approved Basic Course for Parole Officers; and

2. Have been sworn as a peace officer by taking the oath of office and completing the oath of office form.

Amended by R.2004 d.446, effective December 6, 2004.
See: 36 N.J.R. 2136(a), 36 N.J.R. 5359(a).

Rewrote the section.

Case Notes

Parole officer recruit's appeal from the State Parole Board's decision to remove her following her failure to complete mandated training should have been dismissed without prejudice; although the recruit failed to timely perfect an appeal to the Police Training Commission regarding her failure to complete the course to its satisfaction, she was in the process of attempting to have the Commission accept her untimely appeal and, if her attempt was successful, the recruit would have been able to proceed with her appeal from the Parole Board's removal decision. In re Johnson, OAL Dkt. No. CSV 8558-06, 2007 N.J. AGEN LEXIS 1164, Final Decision (July 25, 2007).

10A:72-4.2 Firearms training, qualification and requalification

(a) As required by N.J.S.A. 2C:39-1 et seq., all parole officers shall be initially trained and shall qualify in the use and handling of approved on-duty and off-duty firearms.

(b) Parole officers shall requalify semiannually on a range approved by the Police Training Commission.

(c) Only those parole officers who achieve and maintain a minimum score of 80 percent during range qualification and requalification shall be authorized to possess firearms while on-duty and off-duty.

(d) Once a parole officer has qualified with his or her approved firearm, the parole officer shall be required to carry the official State issued badge and photo identification card while on duty.

(e) The Director, Division of Parole, or designee shall maintain a current master list of all parole officers authorized to carry a firearm. The list shall include each parole officer's firearm qualification dates (new or expired), the model name and number of each parole officer's authorized firearm(s) and the serial number of the authorized firearm(s).

Amended by R.2004 d.446, effective December 6, 2004.

See: 36 N.J.R. 2136(a), 36 N.J.R. 5359(a).

Rewrote the section.

10A:72-4.3 On-duty firearm

(a) The authorized on-duty firearm shall be the responsibility of the parole officer at all times.

(b) The parole officer shall not draw or exhibit his or her firearm except for one of the following circumstances:

1. For maintenance of the firearm;
2. To secure the firearm;
3. During training exercises, range practice, qualification or requalification with the firearm; or
4. When circumstances create a reasonable belief that it may be necessary to use the firearm in the performance of the parole officer's duties.

(c) A parole officer while on-duty, shall carry his or her on-duty firearm on his or her person at all times unless otherwise instructed by his or her immediate supervisor. The firearm shall:

1. Remain in the holster while in a rest room; and

2. Not be left in a motor vehicle or other unauthorized location except under unusual or special circumstances, such as when a parole officer must remove his or her on-duty firearm and another authorized Division of Parole staff member is unavailable to take custody of the firearm. Under an unusual or special circumstance every effort shall be made to secrete the firearm within the locked trunk or other locked compartment of the parole officer's motor vehicle.

(d) When off-duty, the parole officer shall be authorized to carry his or her on-duty firearm, baton and chemical agent to and from work.

(e) The parole officer may elect to carry his or her on-duty firearm as his or her sole authorized off-duty firearm.

(f) The parole officer entering any residential or correctional facility of the Department of Corrections shall store his or her firearm at the main correctional facility or at an approved Department of Corrections authorized weapons storage unit.

(g) The parole officer entering any county correctional facility shall store his or her firearm in the designated area at the county correctional facility or at an approved Board authorized weapons storage unit.

(h) When an authorized firearm is believed to have been lost or stolen, the parole officer shall report this fact to the local law enforcement authorities and to the Director, Division of Parole, his or her designee or the designee of the Chairperson within three hours from the time the parole officer is aware that the firearm is missing.

(i) When an official State issued photo identification card or badge is believed to have been lost or stolen, the parole officer shall notify the local law enforcement authorities and the Director, Division of Parole, his or her designee or the designee of the Chairperson within 24 hours from the time the parole officer is aware that the State issued official photo identification card or badge is missing.

(j) The authorized on-duty firearm shall not be utilized by a parole officer in the performance of any secondary employment.

Amended by R.2004 d.446, effective December 6, 2004.

See: 36 N.J.R. 2136(a), 36 N.J.R. 5359(a).

Rewrote the section.

Amended by R.2011 d.291, effective December 5, 2011.

See: 43 N.J.R. 1408(a), 43 N.J.R. 3184(a).

In (b)3, substituted "During" for "When commanded by the firearms staff during".

10A:72-9.10 Supervision of volunteers

The supervision of volunteers shall be provided by the District Office supervising staff members to whom the volunteers have been assigned.

10A:72-9.11 Performance evaluation

(a) The District Volunteers in Parole Program (V.I.P.P.) Coordinator, along with the volunteer's immediate supervisor, shall evaluate the performance of the volunteer after a trial period of four months, using Form 608.7 Volunteer Performance Evaluation.

(b) A performance evaluation shall include, but not be limited to, the following criteria:

1. Attitude toward work;
2. Relationship with co-workers and staff;
3. Relationship with parolee; and
4. Reliability.

(c) If the evaluation is unsatisfactory, a conference shall be scheduled with the volunteer, the District V.I.P.P. Coordinator, the immediate supervisor and any other appropriate staff member(s).

(d) Following the conference, the District V.I.P.P. Coordinator shall recommend to the District Parole Supervisor the retention or termination of the volunteer.

(e) The performance evaluation of a student intern shall be submitted according to the requirements of the educational institution attended by the student.

(f) A final evaluation using Form 608.7 Volunteer Performance Evaluation shall be completed on all volunteers.

10A:72-9.12 Recognition of volunteers

The Division of Parole may schedule an annual event to acknowledge the contribution of volunteers.

10A:72-9.13 Curtailing, suspending or discontinuing the services of a volunteer

(a) The District Parole Supervisor may curtail, suspend or discontinue the services of a volunteer for reasons that include, but are not limited to:

1. Any breach of confidentiality (N.J.A.C. 10A:71-2.2, Records designated confidential);
2. An arrest of the volunteer;
3. A physical or emotional illness;
4. The inability to cooperate with staff;
5. Irregular attendance; or
6. Violation of the rules of the Volunteer in Parole Program (V.I.P.P.) as established in this chapter.

Amended by R.2012 d.033, effective February 6, 2012.
See: 43 N.J.R. 2144(b), 44 N.J.R. 270(a).

In the introductory paragraph of (a), substituted "that" for "which"; and in (a)1, deleted "see" preceding "N.J.A.C.", updated the N.J.A.C. reference and inserted "designated confidential".

10A:72-9.14 Reporting responsibilities

The District Volunteers in Parole Program (V.I.P.P.) Coordinator shall submit annual reports to the V.I.P.P. Supervisor which shall include a list of all volunteers listed by category for the fiscal year who have been terminated and the corresponding date of action.

SUBCHAPTER 10. CURFEW AND ELECTRONIC MONITORING**10A:72-10.1 Criteria**

(a) This subchapter applies to the following:

1. The effectuation of the general condition of curfew for those offenders serving a special sentence of community or parole supervision for life;

2. The imposition of a special condition of curfew for those offenders serving a mandatory period of parole supervision pursuant to N.J.S.A. 2C:43-7.2(c); and

3. The imposition of a special condition of electronic monitoring for those offenders serving a special sentence of community or parole supervision for life or a mandatory period of parole supervision pursuant to N.J.S.A. 2C:43-7.2(c).

(b) The District Parole Supervisor, Assistant District Parole Supervisor or designee of the District Parole Supervisor, may effectuate the general condition of curfew or impose a special condition that the offender abide by an assigned curfew or participate in electronic monitoring if:

1. There is a specific and articulable reason and a clear purpose for the imposition of the curfew or electronic monitoring; and

2. The imposition of the curfew or electronic monitoring will act as an aid to the offender's re-entry efforts; or

3. The imposition of the curfew or electronic monitoring is deemed necessary to protect the public from recidivism by the offender.

10A:72-10.2 Specifications

(a) The curfew or electronic monitoring period established pursuant to N.J.A.C. 10A:72-10.1(b) shall comply with the following specifications:

1. The curfew or electronic monitoring period shall specify the hours when the offender is restricted to his or her approved residence;

2. The curfew or electronic monitoring period shall specify a beginning and ending date for the curfew or electronic monitoring;

3. The start and end time of the curfew or electronic monitoring period shall be reasonable and commensurate with the stated justification;

4. The curfew or electronic monitoring period shall not be imposed in a manner that would interfere with the offender's verifiable employment and/or educational requirements;

5. The curfew or electronic monitoring period shall be imposed for a maximum of 180 days;

6. A District Parole Supervisor, Assistant District Parole Supervisor or designee of the District Parole Supervisor, shall review the curfew or electronic monitoring period no less than 90 days after imposition to determine if it remains warranted; and

7. Any extension of the curfew or electronic monitoring period beyond 180 days shall require an additional review by the District Parole Supervisor, Assistant District Parole Supervisor or designee of the District Parole Supervisor, and shall conform with the procedures in N.J.A.C. 10A:72-10.3.

10A:72-10.3 Procedure

(a) The offender shall be served in person with written notice of the imposition of the curfew or electronic monitoring condition. The written notice shall include the basis for the imposition of the condition.

(b) The offender shall be provided with a written informational statement that details the procedure for the imposition of the curfew or electronic monitoring condition.

(c) The offender shall indicate in writing whether he or she contests the allegations, the conclusions to be drawn from the allegations or the justification supporting the imposition of the curfew or electronic monitoring condition.

(d) If the offender does not deny the allegations, contest the conclusions to be drawn from the allegations or the rationale supporting the curfew or electronic monitoring condition, the offender shall be advised that the curfew or electronic monitoring condition shall be effectuated immediately.

(e) If the offender contests the allegations, the conclusions to be drawn from the allegations or the rationale supporting the curfew or electronic monitoring condition and exigent circumstances do not exist as to require the immediate effectuation of the curfew or electronic monitoring condition, the following procedures shall apply:

1. The offender shall be advised that he or she will have five business days to submit a written statement or

documentation to the District Parole Office to be considered before the curfew or electronic monitoring condition becomes effective;

2. The offender shall be advised that if the offender fails to submit a written statement or documentation within five business days, the curfew or electronic monitoring condition shall become effective immediately upon the expiration of the five business days;

3. If the offender submits a written statement or documentation within five business days, the curfew or electronic monitoring condition shall not be effectuated until such time as a board panel authorizes the effectuation of the curfew or electronic monitoring condition;

4. The District Parole Office shall forward a copy of the written notice of the imposition of the curfew or electronic monitoring condition to a board panel. If the offender contests the imposition of the curfew or electronic monitoring condition and has submitted a written statement or documentation to the District Parole Office, a copy of the written statement and documentation shall be forwarded by the District Parole Office to the board panel for consideration;

5. An offender shall not be precluded from submitting a written statement or documentation to the District Parole Office after the expiration of the five business days time period. However, the failure to comply with the five business days time period shall result in the immediate effectuation of the curfew or electronic monitoring condition; and

6. If the District Parole Office receives a written statement or documentation from an offender after the expiration of the five business days time period, the District Parole Office shall forward a copy of the written statement or documentation to the board panel for consideration.

(f) If the offender contests the allegations, the conclusions to be drawn from the allegations or the rationale supporting the curfew or electronic monitoring condition and the District Parole Office believes that exigent circumstances do exist as to require the immediate effectuation of the curfew or electronic monitoring condition, the following procedures shall apply:

1. The District Parole Supervisor shall review the offender's case within 24 hours of the determination to impose the curfew or electronic monitoring condition to determine whether exigent circumstances do exist as to require immediate effectuation of the curfew or electronic monitoring condition and shall verbally advise the offender and the assigned parole officer of his or her determination. If the District Parole Supervisor shall determine that exigent circumstances exist, the District Parole Supervisor shall also provide written notice to the offender as to the basis for the determination;

2. If the District Parole Supervisor determines that exigent circumstances do exist, the curfew or electronic monitoring condition shall be effectuated immediately;

3. The offender shall be advised that he or she will have five business days to submit a written statement or documentation to be considered;

4. The District Parole Office shall forward a copy of the written notice of the imposition of the curfew or electronic monitoring condition and, if exigent circumstances were found to exist by the District Parole Supervisor, a copy of the written notice of the basis for the determination of the existence of exigent circumstances to a board panel. If the offender contests the imposition of the curfew or electronic monitoring condition and has submitted a written statement or documentation to the District Parole Office, a copy of the written statement or documentation shall be forwarded by the District Parole Office to the board panel for consideration;

5. An offender shall not be precluded from submitting a written statement or documentation to the District Parole Office after the expiration of the five business days time period; and

6. If the District Parole Office receives a written statement or documentation from an offender after the expiration of the five business days time period, the District Parole Office shall forward a copy of the written statement or documentation to the board panel for consideration.

10A:72-10.4 Board panel review

(a) Upon receipt of the written notice of the imposition of the curfew or electronic monitoring condition, the basis for the imposition of the curfew or electronic monitoring condition, the written statement of the offender, if submitted, and any attendant documents, a board panel shall review the offender's case.

(b) If the board panel determines a hearing shall be conducted prior to the effectuation of the curfew or electronic monitoring condition based on a finding that an issue of fact requires resolution, the matter shall be referred for the scheduling of a hearing before a designated hearing officer.

(c) If the board panel concurs in the determination that exigent circumstances exist and determines a hearing shall be conducted based on a finding that an issue of fact requires resolution, the matter shall be referred for the scheduling of a hearing before a designated hearing officer.

(d) If the board panel does not concur with the determination that exigent circumstances exist and determines a hearing shall be conducted based on a finding that an issue of fact requires resolution, the matter shall be referred for the scheduling of a hearing before a designated hearing officer. The offender and District Parole Office shall be advised that the curfew or electronic monitoring condition shall be held in abeyance pending the conducting of a hearing.

(e) If the board panel determines that a hearing is not required, the board panel shall determine whether to affirm, modify or vacate the imposition of the curfew or electronic monitoring condition.

(f) The offender and the District Parole Office shall be advised in writing of the board panel's decision.

10A:72-10.5 Hearing; scheduling

(a) Except as provided in this section, the hearing required pursuant to N.J.A.C. 10A:72-10.4 shall be conducted within 21 days of the board panel's determination that a hearing shall be conducted.

(b) The hearing may be conducted by video conferencing. A record of the hearing shall be made pursuant to N.J.A.C. 10A:72-10.8.

(c) If the offender requests a postponement of the hearing, such request may be granted by the hearing officer upon a showing of good cause.

(d) If the request to postpone the hearing is granted, the hearing shall be rescheduled no later than 14 days from the date of the request to postpone the hearing.

10A:72-10.6 Hearing; notice of hearing

(a) It shall be the responsibility of designated board staff to provide written notice to the offender of the time, date and place of the hearing.

(b) Such notice shall inform the offender of the purpose of the hearing, the possible action that may be taken as a result of the hearing proceedings and the following rights to which the offender shall be entitled to at the hearing:

1. The right to appear and speak in his or her behalf and to be aided by an interpreter, if such aid is determined to be necessary;

2. The right to present witnesses to testify in his or her behalf as to the issue of fact to be resolved;

3. The right to confront and cross-examine adverse witnesses, unless the hearing officer determines that such witnesses would be subjected to risk or harm;

4. The right to present documentary evidence and any other relevant material or information;

5. The right to waive such hearing; and

6. The right to request postponement of such hearing.

(c) The designated hearing officer shall notify the offender and other participants in the hearing that their statements will be taken under oath.

10A:72-10.7 Hearing; failure to appear

If the offender fails to attend the hearing on the original scheduled date or upon a postponement being granted fails to

attend the rescheduled hearing and the offender has failed to provide good cause for his or her non-appearance, the curfew or electronic monitoring condition shall be deemed not to be contested by the offender and the matter shall be presented to the board panel based on the existing record for a final determination.

10A:72-10.8 Hearing; record

(a) The hearing officer shall record the hearing by an electronic recording device. If the electronic recording device is not operational the hearing shall proceed only upon the offender waiving the electronic recording of the hearing. The waiver shall be in writing and signed by the offender and shall be made a part of the offender's records. If the offender does not wish to proceed without the electronic recording of the hearing, the hearing shall be rescheduled within 14 days.

(b) Any statement, document or information relevant to the issue of resolution may be received as evidence. The hearing officer is authorized to exclude any statement, document or information not relevant to said issue.

(c) The hearing officer shall prepare a written report that shall summarize the facts and testimony presented at the hearing. The report shall include the finding of the hearing officer on the issue of fact that required resolution.

(d) A copy of the hearing report shall be forwarded to the offender, District Parole Supervisor and to the board panel within seven days of the hearing.

(e) The hearing officer may verbally advise the offender at the time of the hearing of the determination of the hearing officer.

10A:72-10.9 Hearing; notice of decision

Within 21 days of the hearing, the board panel shall render a decision. Written notice of the decision shall be provided to the offender and the District Parole Supervisor.

SUBCHAPTER 11. SEX OFFENDER GLOBAL POSITIONING SYSTEM (GPS) MONITORING PROGRAM

10A:72-11.1 Criteria

(a) Pursuant to N.J.S.A. 30:4-123.91, the following persons shall be enrolled in the Sex Offender Global Positioning System (GPS) Monitoring Program:

1. An offender whose risk of re-offense has been determined to be high pursuant to N.J.S.A. 2C:7-8; and
2. An offender who the Chairperson of the State Parole Board (Chairperson) deems appropriate for GPS monitoring pursuant to (b) below and who:

i. Was subject to civil commitment as a sexually violent predator in accordance with the provisions of N.J.S.A. 30:4-27.24 et seq. and has been conditionally discharged or discharged pursuant to N.J.S.A. 30:4-27.36;

ii. Has been sentenced to a special sentence of community or parole supervision for life; or

iii. Has been convicted of or adjudicated delinquent for a sexual offense enumerated in N.J.S.A. 2C:7-2 and the victim of the offense was under 18 years of age or 60 years of age or older, regardless of the date of conviction.

(b) The Chairperson, in exercising his or her discretion pursuant to (a)2 above, shall consider the risk to the public posed by the subject, based on relevant risk factors, such as the seriousness of the offense, the age of the victim or victims, the degree of force and contact, and any other factors the Chairperson deems appropriate.

(c) An offender shall not be subject to GPS monitoring during the time period an offender is in custody due to arrest, incarceration, or civil commitment.

(d) The GPS monitoring program shall provide for the time-correlated or continuous tracking of the geographic location of an offender using GPS-based satellite or other location technology.

10A:72-11.2 Global positioning system (GPS) monitoring referral procedure

(a) An offender whose risk of re-offense has been determined to be high pursuant to N.J.S.A. 2C:7-8 shall be automatically enrolled in the Sex Offender GPS Monitoring Program.

(b) If a parole officer believes that an offender meets the criteria specified in N.J.A.C. 10A:72-11.1(a)2 and that GPS monitoring is appropriate, the parole officer shall review the offender's case with an Assistant District Parole Supervisor, District Parole Supervisor, or Supervising Parole Officer for consideration of GPS monitoring.

(c) The Assistant District Parole Supervisor, District Parole Supervisor, or Supervising Parole Officer shall determine whether the offender's case shall be referred for GPS monitoring.

(d) If the determination is made by the Assistant District Parole Supervisor, District Parole Supervisor, or Supervising Parole Officer that a GPS monitoring referral is appropriate, the offender's case shall be reviewed by the Director, Division of Parole, or designee, to determine whether a GPS monitoring referral is appropriate.

(e) If the determination is made by the Director, Division of Parole, or designee, that a GPS monitoring referral is appropriate, the offender shall be served in person with