

**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**

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**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).



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

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

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

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

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

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

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

Administrative correction, effective January 27, 1989.

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

Institutional name change.

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

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

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

### 10A:71-1.2 Board meetings

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) Substantially amended.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section substantially amended.

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

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

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

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

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

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

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

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

#### 10A:71-1.4 Board membership

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

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

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

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

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

(f) When a vacancy on the Board exists which has not been filled by the Governor, the membership of the Board and Board panel shall be deemed to be the existing members of the Board and Board panel, respectively.

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

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

Rewrote the section.

**10A:71-1.5 Disqualification or incapacity of board members**

(a) A Board member shall not participate in any Board or Board panel deliberations or disposition of any case in which the Board member has a personal interest, prejudice or bias.

(b) A Board member shall not participate in any Board or Board panel disposition of the member's initial decision, nor shall any Board member who acted as a hearing officer on a particular case participate in any Board or Board panel disposition of such case.

(c) A majority of the Board shall be deemed to be a majority of the Board members not disqualified pursuant to this subsection.

(d) When by reason of incapacity a quorum of the Board or Board panel is lost, the Chairperson shall immediately request that the Governor appoint a qualified person to act in the incapacitated Board member's stead during the period of such incapacity.

(e) When by reason of disqualification of a member of a Board panel on adult inmates, a quorum of the Board panel is lost, the Chairperson shall immediately assign another member of one of the Board panels on adult inmates to act in the disqualified Board member's stead during the period of disqualification or, if circumstances merit, assign the case(s) to another panel of Board members on adult inmates.

(f) When by reason of disqualification a quorum of the juvenile board panel is lost, the Chairperson shall immediately request the Governor to appoint a qualified person to act in the stead of the disqualified Board member(s) during the period of disqualification.

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

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

Subsections (e) and (f) added.

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

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

**10A:71-1.6 Presiding board member**

In the absence of the chairperson or vice-chairperson, the senior Board member shall function as the presiding member of the Board or Board panel.

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

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

Inserted a reference to vice-chairpersons.

**10A:71-1.7 Delegated authority**

Powers delegated to a Board member or representative shall be exercised in accordance with Board policies and directives.

**10A:71-1.8 Public release of information**

(a) The Chairperson of the Board shall function as the Board's chief spokesman and representative to all agencies of government on any parole matter.

(b) The Chairperson of the Board is vested with the responsibility for the release of information on any parole matter in accordance with Board policy.

(c) Action by the Board, a Board panel or by a Board member on individual adult cases may be released after notifying the inmate of the determination.

#### 10A:71-1.9 Published information

(a) As provided by law, the Board shall publish a yearly report detailing the operations, organization and procedures of the Board.

(b) The Board will periodically review and update with appropriate amendments handbooks for distribution to all inmates subject to the jurisdiction of the Board detailing parole policies and procedures and shall request the chief executive officer of each state and county facility to make such handbooks available to all inmates subject to the jurisdiction of the Board.

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

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

(b) Substantially amended.

## SUBCHAPTER 2. GENERAL ADMINISTRATIVE PROVISIONS

### 10A:71-2.1 Confidentiality of information and records

(a) The following information, files, documents, reports, records or other written material submitted to, prepared and maintained by or in the custody of the Board, any Board member or employee pertaining to parole and parole supervision are deemed confidential:

1. Reports which are evaluative, diagnostic or prognostic in nature, furnished with a legitimate expectation of confidentiality and which, if revealed to the inmate/parolee or others, could be detrimental to the inmate, adversely affect the inmate's rehabilitation or the future delivery of rehabilitative services, jeopardize the physical safety of individuals who signed the reports or were parties to the decisions, conclusions, or statements contained therein;

2. Information, files, documents, reports, records or other written materials which, if disclosed, could have an adverse impact on the security or orderly operation of an institution;

3. Information, files, documents, reports, records or other written materials which, if disclosed, would infringe or jeopardize privacy rights of the inmate/parolee or others or endanger the life or physical safety of any person;

4. Disciplinary and investigative reports, including those from informants, which, if disclosed, would impede

ongoing investigations, create a risk of reprisal, or interfere with the security or orderly operation of an institution;

5. Investigative reports or information compiled or intended for law enforcement purposes which, if disclosed, would impede ongoing investigations, interfere with law enforcement proceedings, constitute an unwarranted infringement of personal privacy, reveal the identity of a confidential source or confidential information furnished only by a confidential source, reveal investigative techniques and procedures, or endanger the life or physical safety of law enforcement personnel, confidential informants, victims or witnesses;

6. Information, files, documents, reports, records or other written materials which, if disclosed, would impede Board functions by discouraging persons from providing information to the Board;

7. Information, files, documents, reports, records or other written materials classified as confidential pursuant to the Department's, Commission's or another agency's rules, statutory provisions or judicial decisions;

8. A transcript, if prepared, of any proceeding of the Board;

9. Such other information, files, documents, reports, records or other written materials as the Board may deem confidential to insure the integrity of the parole and parole supervision processes; and

10. All information, statements or testimony provided by a victim or nearest relative of a murder/manslaughter victim.

(b) All information, files, documents, reports, records or other written materials prepared and maintained by or in the custody of the Board, any Board member or employee pertaining to the administrative operations of the Board are deemed confidential.

(c) No information, files, documents, reports, records or other written material deemed confidential pertaining to inmates or parolees shall be reviewed by any person except a Board member or employee or individual or law enforcement agency authorized by the Board or by the Chairperson.

(d) Inmates or parolees shall be afforded disclosure of adverse material or information considered at a hearing, provided such material is not classified as confidential by the Board or the Department. If disclosure is withheld, the reason for nondisclosure shall be noted in the Board's files, and such material or information shall be identified as confidential.

(e) If any non-confidential file, document, report, record or other written material shall contain information deemed confidential pursuant to (a) above, the information deemed confidential shall be deleted prior to the file, document,

report, record or other written material being reviewed by or released to any person or agency.

Amended by R.1989 d.151, effective March 20, 1989.  
See: 20 N.J.R. 2129(a), 21 N.J.R. 767(a).

(a) eliminated all files as confidential and specified in 1-9 those which are considered confidential; added new (b), Board materials all deemed confidential and (e) added, concerning when to delete material prior to review.

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

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

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

In (a)7, inserted reference to the Commission's rules.

#### Case Notes

Information arising from parole hearings 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).

Confidentiality of parole records does not constitute a privilege against disclosure barring the release of records to prosecutor in response to a subpoena duces tecum for use against a parolee-defendant in a criminal trial (citing former N.J.A.C. 10:70-12 and 12.2). State v. Singleton, 137 N.J.Super. 436, 349 A.2d 139 (Law Div.1975) affirmed 158 N.J.Super. 517, 386 A.2d 880 (App.Div.1978), certification denied 79 N.J. 470, 401 A.2d 227 (1978).

Statute and rule 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, 309 A.2d 241 (App.Div.1986).

#### 10A:71-2.2 Records retention

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

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

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

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

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

#### 10A:71-2.3 Subpoenas

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

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

Corrected subpoena.

#### 10A:71-2.4 Institutional infractions

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

(b) No rescission hearing shall be held pursuant to N.J.A.C. 10A:71-5, nor shall any alteration of the parole eligibility date be made pursuant to N.J.A.C. 10A:71-3 on the basis of an institutional infraction which has resulted in a finding of not guilty by the appropriate Department or Commission officials.

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

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

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

Deleted text "relating to the infraction".

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

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

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

#### Case Notes

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

#### 10A:71-2.5 Institutional representatives

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

### SUBCHAPTER 3. PAROLE RELEASE HEARINGS

#### Subchapter Historical Note

Amendments were filed and became effective May 21, 1980 as R.1980 d.226. See: 12 N.J.R. 335(b). Further amendments were filed and became effective November 6, 1980 as R.1980 d.488. See: 12 N.J.R. 537(a), 12 N.J.R. 724(c). Further amendments were filed and became effective December 23, 1980 as R.1980 d.554. See: 12 N.J.R. 664(e), 13 N.J.R. 101(c). Further amendments were filed and became effective June 7, 1981 as R.1981 d.179. See: 13 N.J.R. 228(c), 13 N.J.R. 364(c).

**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**

(a) 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. Failure to cooperate in his or her own rehabilitation shall include, in the case of an inmate who suffers from mental illness as defined in N.J.S.A. 30:4-27.2 that does not require institutionalization, that the inmate failed to fully participate in or cooperate with all prescribed treatment offered during incarceration.

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

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

the hearing indicates by the preponderance of the evidence that the inmate has failed to cooperate in his or her own rehabilitation or that there is a reasonable expectation that the inmate will violate conditions of parole if released on parole.

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

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

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

(c) substantially amended. (d) added.  
Amended by R.1995 d.109, effective February 21, 1995.  
See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).  
Amended by R.1998 d.391, effective August 3, 1998.  
See: 30 N.J.R. 1176(a), 30 N.J.R. 2920(a).

In (a), added "In the case of an inmate serving a sentence for an offense committed prior to August 19, 1997," at the beginning; inserted a new (b); recodified former (b) through (d) as (c) through (e); and in (d), inserted a reference to (c).

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

Rewrote (c); inserted a new (d); recodified former (d) and (e) as (e) and (f); and in the new (e), inserted a reference to (d).  
Amended by R.1999 d.252, effective August 2, 1999.  
See: 31 N.J.R. 1140(a), 31 N.J.R. 2218(a).

In (b), added the last sentence.

#### **10A:71-3.11 Factors considered at parole hearings; adult inmates**

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

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

1. Commission of a crime while incarcerated.
2. Commission of serious disciplinary infractions.
3. Nature and pattern of previous convictions.
4. Adjustment to previous probation, parole and incarceration.
5. Facts and circumstances of the offense.

6. Aggravating and mitigating factors surrounding the offense.

7. Pattern of less serious disciplinary infractions.

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

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

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

11. Documented changes in attitude toward self or others.

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

13. Mental and emotional health.

14. Parole plans and the investigation thereof.

15. Status of family or marital relationships at the time of eligibility.

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

17. Statements by the inmate reflecting on the likelihood that he or she will commit another crime.

18. History of employment, education and military service.

19. Family and marital history.

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

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

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

23. The results of the objective risk assessment instrument.

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

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

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

(b) 21 and 22 added.

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

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

In (b), added 23.

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

#### Case Notes

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

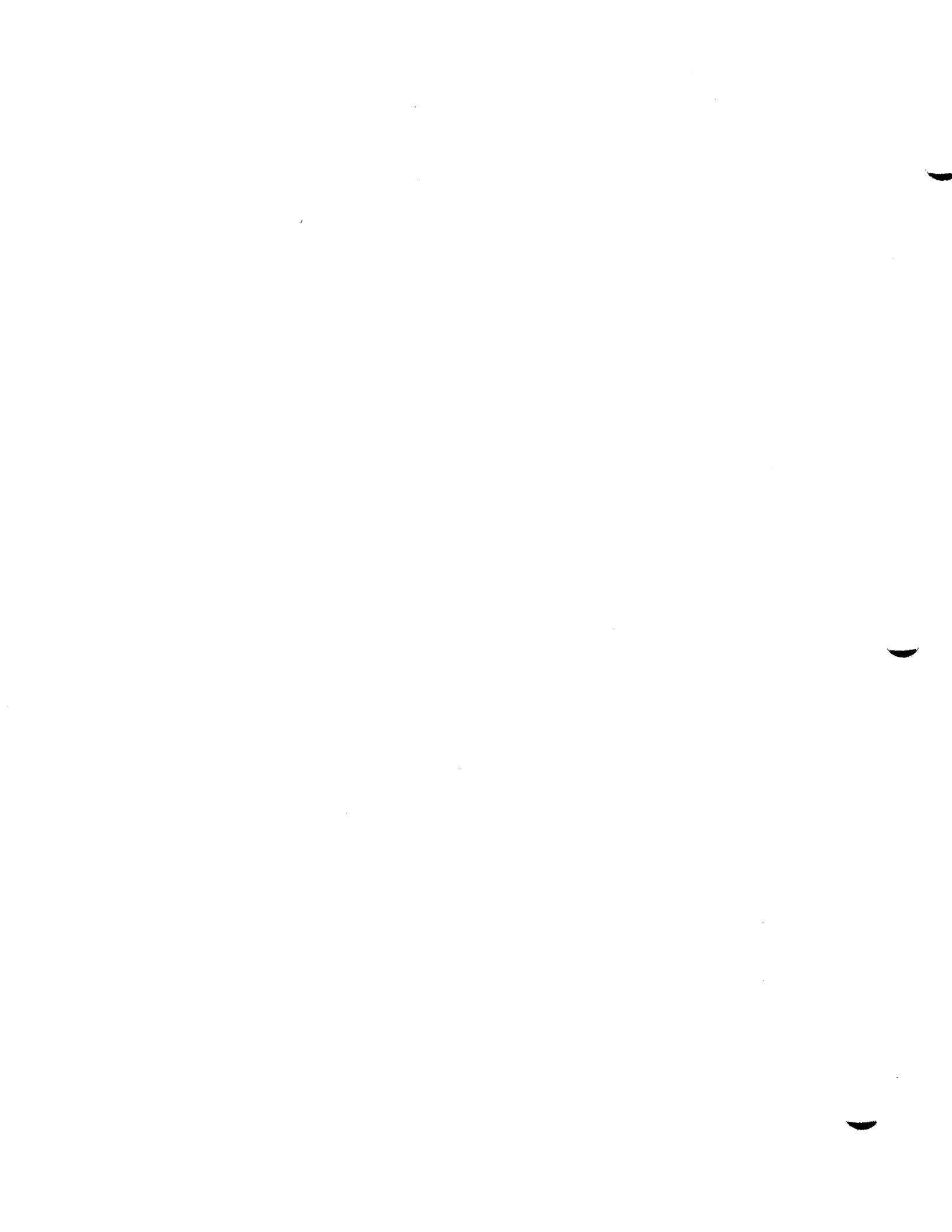
The prosecutor has the right to appeal any Parole Board decision granting parole to a state prison inmate: Board is not required to provide the prosecutor with a statement of reasons for release decision, but should do so in the public interest in those cases in which the prosecutor has participated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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Added tentative.

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

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

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

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

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

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

### 10A:71-3.33 Post-incarceration supervision

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Added text "awarded by the sentencing court".

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

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

Recodified from 10A:71-3.33 by R.1997 d.168, effective April 7, 1997.

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

(l) In interstate corrections compact and s.t.o.s. cases, the Board panel shall request the cooperation of the out-of-state or Federal institutional authority in arranging the conducting of the Board panel hearing by means of a teleconferencing system. If teleconferencing is not feasible or if the offender shall waive such a hearing, the Board panel shall administratively review the offender's case records, the report submitted by the out-of-state or Federal institutional authority, the statements or information submitted by the offender and interested parties and, in interstate corrections compact cases, the recommendation and comments of the out-of-state or Federal parole or release authority.

(m) Upon conclusion of the Board panel hearing, the Board panel shall comply with the provisions of N.J.A.C. 10A:71-3.18.

(n) If a three-member Board panel hearing is to be scheduled pursuant to N.J.A.C. 10A:71-3.21(d) for the purpose of establishing a future parole eligibility date which differs from the provisions of N.J.A.C. 10A:71-3.2(a) or (b) and (c), the Board panel shall request the cooperation of the out-of-state or Federal institutional authority in arranging the conducting of the Board panel hearing by means of a teleconferencing system. If teleconferencing is not feasible or if the offender shall waive such a hearing, the three-member Board panel shall administratively review the offender's case. Pursuant to N.J.A.C. 10A:71-3.2(d)3 or 6, the offender shall be provided written notice of the reasons for the establishment of a future parole eligibility date which differs from the provisions of N.J.A.C. 10A:71-3.21(a) or (b) and (c).

(o) If a Board hearing is to be scheduled pursuant to N.J.A.C. 10A:71-3.19, the Board shall request the Department in interstate corrections compact cases to make the necessary arrangements to return the offender to this State and to have the offender present at New Jersey State Prison on the hearing date. In s.t.o.s. cases, the Board shall request the cooperation of the out-of-state or Federal institutional authorities in arranging the conducting of the Board hearing by means of a teleconferencing system. If teleconferencing is not feasible or if the offender shall waive such a hearing, the Board shall administratively review the offender's case.

(p) Upon the conclusion of the Board hearing, the Board shall comply with the provisions of N.J.A.C. 10A:71-3.20.

(q) If an annual review hearing is to be scheduled pursuant to N.J.A.C. 10A:71-3.21(f), the following shall occur:

1. The Board shall notify the Department that the offender will be scheduled for an annual review hearing. The Department upon notice being provided shall request the out-of-state or Federal institutional authority to submit to the Board a report concerning the offender. The report shall consist of the information required in N.J.A.C. 10A:71-3.7(e)3 through 7.

2. The Board shall notify the offender that his case will be scheduled for an annual review hearing before a designated Board panel. The offender shall be given 30 days to file with the Board a written statement and any other written information which the offender may wish the designated Board panel to review.

3. The Department shall request the out-of-state or Federal institutional authority to provide the offender with a copy of the report, except for information classified as confidential, at the time the report is submitted to the Board through the Department.

4. Upon receipt of the report, the offender's written statement and any other relevant information, the Chairperson shall within 15 days assign the offender's case to a designated Board panel for the conducting of an annual review hearing.

5. The designated Board panel shall request the cooperation of the out-of-state or Federal institutional authority in arranging the conducting of the annual review hearing by means of a teleconferencing system. If teleconferencing is not feasible or if the offender shall waive the conducting of such a hearing, the designated Board panel shall administratively review the offender's case.

6. The designated Board panel shall advise the offender in writing of its determination.

(r) The Board shall insure that written notice of any decision rendered is provided to the Department and the out-of-state or Federal institutional authority.

New Rule, R.1994 d.272, effective June 6, 1994.  
See: 26 N.J.R. 1191(a), 26 N.J.R. 2285(c).  
Amended by R.1995 d.109, effective February 21, 1995.  
See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).  
Recodified from 10A:71-3.51 by R.1997 d.168, effective April 7, 1997.  
See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

#### **10A:71-3.53 Medical parole**

(a) Pursuant to N.J.S.A. 30:4-123.51c, the appropriate Board panel may release on medical parole any inmate, except as provided in (b) below, serving any sentence of imprisonment who has been diagnosed pursuant to (d) below as suffering from a terminal condition, disease or syndrome and is found by the appropriate Board panel to be so debilitated or incapacitated by the terminal condition, disease or syndrome as to be permanently physically incapable of committing a crime if released on parole. Notwithstanding any provision of N.J.S.A. 30:4-123.45 et seq. or this chapter to the contrary, the appropriate Board panel may release on medical parole any such inmate at any time during the term of the sentence.

(b) Pursuant to N.J.S.A. 30:4-123.51c(a)3, no inmate serving any sentence for a violation of N.J.S.A. 2C:11-3 (murder); N.J.S.A. 2C:11-4 (manslaughter); N.J.S.A. 2C:13-1 (kidnapping); N.J.S.A. 2C:14-2(a) (aggravated sexual assault); N.J.S.A. 2C:15-1 (robbery) in which the inmate, while in the course of committing the theft, attempted to kill another or purposely inflicted or attempted to inflict serious bodily injury, or was armed with or used or threatened the immediate use of a deadly weapon; N.J.S.A. 2C:17-1(a) (aggravated arson); N.J.S.A. 2C:24-4 (endangering the welfare of a child); or an attempt to commit any of these offenses shall be eligible for medical parole.

(c) "Terminal condition, disease or syndrome" means a prognosis by the licensed physicians designated by the Commissioner pursuant to (d) below that an inmate has six months or less to live.

(d) A medical diagnosis that an inmate is suffering from a terminal condition, disease or syndrome shall be made by two licensed physicians designated by the Commissioner. The diagnosis shall include, but not be limited to:

1. A description of the terminal condition, disease or syndrome;
2. A prognosis concerning the likelihood of recovery from the terminal condition, disease or syndrome;
3. A description of the inmate's physical incapacity; and
4. A description of the type of ongoing treatment that would be required if the inmate was released on medical parole.

(e) A request for a medical diagnosis to determine whether an inmate is eligible for a medical parole may be submitted to the appropriate Board panel by the Commissioner, the administrator or superintendent of a correctional facility; the inmate; a member of the family of the inmate; or the attorney for the inmate. The request shall be in writing and in a format prescribed by the Board.

(f) The appropriate Board panel shall conduct its review of a request for medical parole as expeditiously as possible. However, at least five working days prior to commencing its review of a request for a medical parole, the appropriate Board panel shall notify the appropriate sentencing court; county prosecutor or, if the matter was prosecuted by the Attorney General, the Attorney General; and any victim or member of the family of a victim entitled to notice relating to a parole or the consideration of a parole under N.J.S.A. 30:4-123.45 et seq. The notice shall be in writing and shall contain all such information and documentation relating to the medical diagnosis prepared pursuant to (d) above as the Board shall deem appropriate and necessary.

(g) Upon receipt of the notice provided by (f) above, the sentencing court; county prosecutor or Attorney General, as the case may be; the victim or member of the family of the victim, as the case may be, shall have 10 working days to review the notice and submit comments to the appropriate Board panel. If a recipient of the notice does not submit comments within the 10 day period following receipt of the notice, the Board panel may presume that the recipient does not wish to submit comments and may proceed with its consideration of the request for medical parole. Any comments provided by a recipient shall be delivered to the appropriate Board panel in the same manner or by the same method as notice was given by the Board panel to the recipient.

(h) The information contained in any notice given by the Board panel pursuant to (f) above and the contents of any comments submitted by a recipient in response thereto shall be confidential and shall not be disclosed to any person who is not authorized by the regulations of the Board or the Department to receive or review that information or those comments.

(i) Notice given pursuant to (f) above shall be in lieu of any other notice of parole consideration required under N.J.S.A. 30:4-123.45 et seq. and this chapter.

(j) Nothing in this section shall be construed to impair any party's right to be heard pursuant to N.J.S.A. 30:4-123.45 et seq.

(k) Upon a decision being rendered by the Board panel, the Board panel shall provide written notice of its decision to the sentencing court; the county prosecutor or Attorney General, as the case may be; and any victim or member of the family of the victim given notice pursuant to (f) above.

(l) Whenever an inmate is granted medical parole pursuant to this section, the Board panel shall require, as a condition precedent to release, that the release plan of the inmate include:

1. Confirmation by the Bureau of Parole of a community sponsor;
2. Verification by the Bureau of Parole of the availability of appropriate medical services sufficient to meet the treatment requirements identified pursuant to (d)4 above; and
3. Verification by the Bureau of Parole of appropriate housing which may include, but need not be limited to, a hospital, hospice, nursing home facility or other housing accommodation suitable to the inmate's medical condition, disease or syndrome.

(m) In addition to the conditions established pursuant to N.J.S.A. 30:4-123.59 and N.J.A.C. 10A:71-6.4(a), the Board panel may require, as a condition of release on medical parole, an inmate to submit to periodic medical diagnoses by a licensed physician.

(n) If, after review of a medical diagnosis required under (m) above, the Board panel determines that a parolee released on medical parole is no longer so debilitated or incapacitated by a terminal condition, disease or syndrome as to be physically incapable of committing a crime, the parolee shall be returned to confinement in an appropriate facility designated by the Commissioner.

1. A decision to return the parolee to confinement shall be rendered only by the Board panel after a hearing conducted by the Board panel or by a hearing officer designated by the Chairperson.

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

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

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

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

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

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

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

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

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

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

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

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

(a) Pursuant to N.J.S.A. 2C:43-7.2(a) (No Early Release Act), a court imposing a sentence of incarceration for a crime of the first or second degree shall fix a minimum term of 85 percent of the sentence during which the offender

shall not be eligible for parole if the crime is a violent crime as defined in N.J.S.A. 2C:7-2(d).

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) As authorized by N.J.S.A. 30:4-123.51b(a), a term of parole supervision imposed by a court pursuant to N.J.S.A. 2C:43-7.2 may be revoked and the offender returned to custody in accordance with provisions of N.J.S.A. 30:4-123.59 to 123.65. In such a case, the provisions of N.J.A.C. 10A:71-7 shall be deemed to apply.

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

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

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

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

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

## SUBCHAPTER 4. APPEALS

### 10A:71-4.1 Requests by inmates for reconsideration

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

1. The hearing officer, Board member, Board panel or Board was presented with inaccurate information, and such information substantially affected the decision being appealed.
2. Significant information which was not considered warrants review of the decision being appealed. Such information may include, among other things, serious instances of medical, personal or family emergency.
3. The hearing officer or a Board member has failed to comply with the Board's professional code of conduct.

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

### 10A:71-4.2 Appeals by inmates

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

1. The Board panel failed to consider material facts.
2. In the case of an inmate serving a sentence for an offense committed prior to August 19, 1997, the Board panel failed to document that a preponderance of the evidence indicates a substantial likelihood that the inmate will commit a crime if released on parole.
3. In the case of an inmate serving a sentence for an offense committed on or after August 19, 1997, the Board panel failed to document that a preponderance of the evidence indicates that:
  - i. The inmate has failed to cooperate in his or her own rehabilitation; or
  - ii. There is a reasonable expectation that the inmate will violate conditions of parole established pursuant to N.J.A.C. 10A:71-6.4(a) if released on parole.
4. The Board panel's decision is contrary to written Board policy or procedure.
5. A Board member participating in the deliberations or disposition of the case has a demonstrable personal interest or demonstrated prejudice or bias in the case which affected the decision.
6. A Board member participating in the deliberations or disposition of the case has failed to comply with the Board's professional code of conduct.

6. The right to waive such hearing.

7. The right to disclosure of adverse information except as provided in N.J.A.C. 10A:71-2.1 or the rules and regulations of the Department or Commission.

(c) When a rescission hearing is conducted pursuant to N.J.A.C. 10A:71-3.48(n)1iii, any and all statements or testimony of the victim or nearest relative of a murder/ma-slaughter victim submitted to the Board pursuant to N.J.A.C. 10A:71-3.48 and the identity of the person submitting such statements or testimony shall be deemed confidential and shall not be released to the inmate. Further, confrontation and cross-examination of the person providing statements or testimony to the Board pursuant to N.J.A.C. 10A:71-3.48 shall not be permitted.

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

Subsection (a) deleted; old (b)-(c) recodified to (a)-(b).  
Amended by R.1997 d.168, effective April 7, 1997.  
See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (a) and (b)8, inserted reference to Commission.  
Amended by R.1999 d.252, effective August 2, 1999.  
See: 31 N.J.R. 1140(a), 31 N.J.R. 2218(a).

In (b), deleted a former 2, and recodified former 3 through 8 as 2 through 7; and added (c).

#### Case Notes

"Residuum evidence rule" inapplicable to Parole Board decisions (citing N.J.A.C. 10A:71-2.1, 10A:71-3.7, 10A:71-3.46); delay in scheduling parole hearing did not violate appellant's due process rights warranting reversal on that ground; when parole rescission decision is based on expert opinion concerning wiretapped conversations said to show criminal activity not presented through tapes or transcripts or both, testifying officer should accurately recount them. *Gerardo v. N.J. State Parole Bd.*, 221 N.J.Super. 442, 534 A.2d 1037 (App.Div.1987).

Right of confrontation at parole release date rescission hearing is at the discretion of prison officials; prisoner's due process rights not infringed upon by either confrontation refusal or failure to reply in writing to confrontation request (citing former N.J.A.C. 10:70-5.1). *O'Neal v. New Jersey State Parole Bd.*, 149 N.J.Super. 174, 373 A.2d 446 (Ch.Div.1977).

#### 10A:71-5.8 Parole rescission hearing; notice of decision

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

(b) If the rescission hearing is conducted by a hearing officer, the hearing officer shall prepare a written summary of the rescission hearing.

1. Such hearing summary shall be forwarded to the appropriate Board panel, and a copy of the summary shall be forwarded to the inmate's attorney or directly to the inmate where he or she has appeared pro se, in order that

the inmate or his or her attorney may object or comment on the hearing summary by submitting written exceptions to the hearing summary. Such exceptions shall be forwarded to the Board panel within 14 days after the receipt of the hearing summary. The provisions of N.J.A.C. 10A:71-2.1 shall be applicable to any hearing summary provided to the inmate.

2. Within 14 days after the receipt of the hearing summary and the written exceptions thereto, the Board panel shall render a final decision as to rescission of parole.

3. The Board panel members shall not receive or consider any ex parte communications. The inmate's case shall be decided on the basis of the established record.

(c) The Board panel shall notify the inmate and the Department or Commission in writing of its decision as to rescission of parole within 21 days after the disposition of the case.

(d) If the Board panel rescinds parole, the written decision shall include in the case of an adult or young adult inmate any future parole eligibility date established pursuant to N.J.A.C. 10A:71-3.21.

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

Cite change at (d).

Amended by R.1995 d.109, effective February 21, 1995.  
See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).  
Amended by R.1997 d.168, effective April 7, 1997.  
See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (c), inserted reference to Commission; and in (d), inserted "in the case of an adult or young adult inmate".

## SUBCHAPTER 6. SUPERVISION

### 10A:71-6.1 Administration

(a) Except as otherwise provided pursuant to the Interstate Parole Compact (N.J.S.A. 2A:168-14 et seq.), the Interstate Compact on Juveniles (N.J.S.A. 9:23-1 et seq.) or the Witness Security Reform Act (18 U.S.C. §§ 3251 et seq.), all adult parolees shall at all times be under the supervision of the Bureau of Parole and all juvenile parolees shall at all times be under the supervision of the Commission.

(b) Supervision shall continue until the expiration of the maximum sentence or sentences subject, however, to earlier discharge from parole in accordance with the provisions of N.J.A.C. 10A:71-6.9.

(c) In the case of a juvenile, supervision shall also continue during the term of post incarceration imposed pursuant to N.J.S.A. 2A:4A-44(d)5 unless the juvenile Board panel determines that post incarceration supervision should be

revoked and the juvenile returned to custody pursuant to the provisions of N.J.S.A. 30:4-123.59 to 30:4-123.65 and N.J.A.C. 10A:71-7.

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

Deleted the text "and payment of any fine".  
Amended by R.1997 d.168, effective April 7, 1997.  
See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (a), amended N.J.S.A. references, inserted reference to Witness Security Reform Act, inserted "adult" preceding "parolees", and added provision relating to supervision of juvenile parolees; and added (c).

### 10A:71-6.2 Supervisory procedures

(a) The Board or the appropriate Board panel may require specific procedures to be followed in the supervision of individual parolees. Notice of such procedures shall be provided in writing to the appropriate supervisory personnel.

(b) It shall be the responsibility of the appropriate supervisory personnel to provide promptly and fully such information as herein required and such information as the Board or its representative may request on individual cases.

### 10A:71-6.3 Certificate of parole

(a) Prior to release on parole, the Board shall issue a written certificate of parole which shall be delivered to and signed by each inmate.

(b) Such certificate of parole shall include all general and special conditions of parole imposed prior to release.

(c) Responsibility for the delivery of the certificates of parole shall rest with the Chief of the Bureau of Parole, a designated representative of the Board, or a designated representative of the Commission, as appropriate.

(d) At the time of such delivery, all parole conditions shall be explained to the inmate.

(e) The Board shall provide a translation of the certificate of parole to any inmate whose primary language is other than English who requests such a translation in writing to the Board.

(f) Before being released on parole, each inmate shall be required to agree to abide by the conditions of his or her parole as evidenced by his or her signature affixed to the certificate of parole.

(g) If the inmate refuses to sign the certificate of parole, the parole release date shall be suspended pursuant to N.J.A.C. 10A:71-5.1.

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

Deleted text "the Chief of the Bureau of Interstate Services".  
Amended by R.1990 d.141, effective March 5, 1990.  
See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

Deleted requirement in (b) that certificate be signed by Board member or members.

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

In (c), inserted reference to a designated representative of the Commission.

### Case Notes

Requirement to make reparations not permitted as a condition of parole; restitution only is allowed by statute; prisoner not entitled to release pending Parole Board's appeal of Superior Court ruling striking down reparations requirement for parole. In re Trantino Parole Application, 177 N.J.Super. 499, 427 A.2d 91 (App.Div.1981), modified and remanded 89 N.J. 347, 446 A.2d 104 (1982).

### 10A:71-6.4 Conditions of parole

(a) The certificate of parole shall contain the following general conditions of parole:

1. You are required to obey all laws and ordinances.

2. You are to report in person to your District Parole Supervisor or his or her designated representative, or the designated representative of the Commission, immediately after you are released on parole from the institution, unless you have been given other written instructions by a designated representative of the Board, Bureau of Parole or Commission, and you are to report thereafter as instructed by the District Parole Supervisor or his or her designated representative, or the designated representative of the Commission.

3. You are to notify your parole officer immediately after any arrest, immediately after your being served with or receiving a complaint or summons and after accepting any pre-trial release including bail.

4. You are to immediately notify your parole officer upon the issuance by the appropriate court, pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., of an order granting emergency relief, a temporary or final restraining order or an order establishing conditions of release or bail in a criminal matter or offense arising out of a domestic violence situation. You are to comply with any condition established within the respective order until the order is dissolved by the appropriate court or until a condition is modified or discharged by the appropriate court.

5. You are to obtain approval of your parole officer:

i. For any change in your residence or employment location.

ii. Before leaving the state of your approved residence.

6. You are not to own or possess any firearm, as defined in N.J.S.A. 2C:39-1f, for any purpose.

7. You are not to own or possess any weapon enumerated in N.J.S.A. 2C:39-1r.

8. You are to refrain from the use, possession or distribution of a controlled dangerous substance, controlled substance analog or imitation controlled dangerous substance as defined in N.J.S.A. 2C:35-2 and N.J.S.A. 2C:35-11.

9. You are required to make payment to the Bureau of Parole or Commission, as appropriate, of any assessment, fine, penalty, lab fee or restitution imposed by the sentencing court.

10. You are to register with the appropriate law enforcement agency and, upon a change of address, re-register with the appropriate law enforcement agency if you are subject to the provisions of N.J.S.A. 2C:7-2.

11. You are to refrain from behavior which results in the issuance of a final restraining order pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq.

12. You are to waive extradition to the State of New Jersey from any jurisdiction in which you are apprehended and detained for violation of this parole status and you are not to contest any effort by any jurisdiction to return you to the State of New Jersey.

(b) In the case of an adult or young adult state inmate subject to the provisions of N.J.S.A. 2C:43-6.4, the certificate of parole shall contain as general conditions of parole, in addition to those conditions specified in (a) above, the conditions as specified in N.J.A.C. 10A:71-6.11(b), (c), (e), (f) and (g) as appropriate.

(c) In the case of juvenile inmates, the certificate of parole shall contain the following general condition of parole, in addition to those conditions contained in (a) above.

1. You are required to attend school on a full-time basis if you are under 16 years of age.

(d) In the case of a county inmate, the performance of public service for the remainder of the term of the sentence shall be a required condition of parole where appropriate. The Chairperson shall be authorized to pursue a contract for services for the supervision by the appropriate county probation department for the performance of public service by county inmates.

(e) Based on the prior history of the inmate or information provided by a victim or a member of the family of a murder victim, the Board members certifying parole release may impose any other specific conditions of parole deemed reasonable in order to reduce the likelihood of recurrence of criminal or delinquent behavior. In addition, the Board members certifying parole release may, giving due regard to a victim's request, impose a special condition that the parolee have no contact with the victim, which special condition may include, but need not be limited to, restraining the parolee from entering the victim's residence, place

of employment, business or school, and from harassing or stalking the victim or victim's relatives in any way.

(f) The Board members certifying parole release may, in the following circumstances, impose as a specific condition of parole that the parolee notify an employer or intended employer of his or her parole status and criminal record:

1. The employment is a "live-in" position, for example, employment and residence are on the property of the employer;

2. The parolee is serving a sentence for the offense of murder, manslaughter, aggravated sexual assault, sexual assault, aggravated criminal sexual contact, endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of a child, luring, aggravated assault, arson or an attempt to commit any such offense;

3. The criminal record of the parolee indicates a conflict with the type of employment; or

4. The employment violates the terms of a New Jersey or Federal licensing law or license applicable to the employer.

(g) The assigned parole officer shall confirm that the notification required by the specific condition under (f) above has been made to the employer and is authorized to make the appropriate notification if the parolee fails to do so.

(h) Nothing in this section shall prohibit the Board members from imposing as a specific condition of parole that the parolee notify an employer or intended employer of his or her parole status and criminal record where good cause exists to impose such a specific condition.

(i) Additional special conditions may be imposed by the District Parole Supervisor, an Assistant District Parole Supervisor, the designated representative of the District Parole Supervisor or the designated representative of the Commission when, in the opinion of the District Parole Supervisor, an Assistant District Parole Supervisor, the designated representative of the District Parole Supervisor, or the designated representative of the Commission, such conditions would reduce the likelihood of recurrence of criminal or delinquent behavior.

1. The parolee shall be given written notice immediately upon the imposition of such an additional special condition.

2. The Board shall be given written notice within seven days upon the imposition of such an additional special condition.

3. An additional special condition imposed shall be deemed to be effective on the date of imposition.

4. Upon notice being received by the Board, the appropriate Board panel or the Board shall review the

parolee's case and determine whether to vacate, modify or affirm the additional special condition(s).

5. The Board panel or the Board shall notify the District Parole Supervisor or the designated representative of the Commission of its determination within 30 days of receipt of notice of the imposition of the additional special condition. Failure by the Board panel or the Board to notify the District Parole Supervisor or the designated representative of the Commission of its determination within 30 days of receipt of notice of the imposition of the additional special condition shall result in the vacating of the special condition.

6. The District Parole Supervisor or the designated representative of the Commission shall notify the parolee in writing of the determination of the Board panel or Board and shall cause a written record of such notice to be made in the parolee's case file.

(j) A District Parole Supervisor, an Assistant District Parole Supervisor, the designated representative of the District Parole Supervisor or the designated representative of the Commission may, under the circumstances specified in (f) above, impose as a special condition that the parolee notify an employer or intended employer of his or her parole status and criminal record. Imposition of the special condition shall be in accordance with the provisions of (i) above. However, the special condition shall not be deemed effective until affirmed by the appropriate Board panel. If the appropriate Board panel is advised that the circumstances of the parolee's case require emergent review, the appropriate Board panel shall review the parolee's case within three working days of receipt of the notice of imposition of the special condition and inform the appropriate party immediately of its determination.

(k) If a parolee owes an assessment, fine, penalty, lab fee or restitution, the District Parole Supervisor or the designated representative of the Commission, as appropriate, shall, unless otherwise ordered by the Board or members certifying parole release or the sentencing court, be responsible for specifying a reasonable schedule for payment of such assessment, fine, penalty, lab fee or restitution.

(l) In the case of an adult or young adult state inmate released on parole with the special condition that the inmate participate in one of the Department's alternative sanctions programs or the aftercare component of the Department's stabilization and reintegration program, the general conditions of the respective program shall be deemed to be special conditions of parole and shall remain in effect until the parolee is discharged from the respective program.

Amended by R.1985 d.213, effective May 6, 1985.  
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).  
Amended by R.1989 d.145 effective March 20, 1989.  
See: 20 N.J.R. 2747(b), 21 N.J.R. 768(a).

At (e), "Assistant District Parole Supervisor" and "designated representative of District Parole Supervisor" added to those who may impose special conditions.

Amended by R.1993 d.398, effective August 16, 1993.  
See: 25 N.J.R. 435(a), 25 N.J.R. 3829(a).  
Amended by R.1995 d.109, effective February 21, 1995.  
See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).  
Amended by R.1995 d.614, effective December 4, 1995.  
See: 27 N.J.R. 3274(b), 27 N.J.R. 4891(a).  
Amended by R.1997 d.168, effective April 7, 1997.  
See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (a)2, inserted references to designated representative of the Commission and substituted "a designated representative of the Board, Bureau of Parole or Commission" for "the Institutional Parole Officer"; in (a)3, inserted provision relating to a complaint or summons; in (a)9, inserted reference to Commission; in (e), (e)2, (e)3, and (f), inserted references to designated representative of the Commission.  
Amended by R.1998 d.144, effective March 16, 1998.  
See: 29 N.J.R. 4243(a), 30 N.J.R. 1044(a).

Inserted a new (b); and recodified former (b) through (f) as (c) through (g).

Administrative correction.

See: 30 N.J.R. 1286(a).  
Amended by R.1998 d.391, effective August 3, 1998.  
See: 30 N.J.R. 1176(a), 30 N.J.R. 2920(a).

In (a), added 10; and rewrote (e).  
Amended by R.1999 d.189, effective June 7, 1999.  
See: 31 N.J.R. 710(a), 31 N.J.R. 1490(a).

In (a), added 11 and 12; inserted new (f) through (h); recodified former (f) as (i); inserted (j); and recodified former (g) as (k).  
Amended by R.1999 d.252, effective August 2, 1999.  
See: 31 N.J.R. 1140(a), 31 N.J.R. 2218(a).

Rewrote (i); and added (l).

Administrative correction.

See: 31 N.J.R. 2755(b).

#### Cross References

Board penal actions for failure to report, see N.J.A.C. 10A:71-7.16B.

#### 10A:71-6.5 Restitution

(a) If the Board members certifying parole release establish a special condition requiring full or partial restitution, the Board shall immediately request that the sentencing court set the amount of such restitution.

(b) The Board shall identify for the sentencing court the elements or factors to be considered in computing the amount of restitution and specify to the court the manner in which the following factors are to be applied.

1. Limitation of restriction to actual loss or damage caused by the crime. Damage may be limited to medical expenses and related costs, funeral expenses, specific personal property losses, other losses if clearly provable, and lost wages for limited periods of time which do not involve assessments of life expectancy.

2. Restitution is to be made to the persons most directly affected by the parolee's criminal acts.

3. Restitution must be related to the parolee's ability to pay and should not exceed an amount which would jeopardize its rehabilitative purpose.

4. Restitution must be directly related to the losses occurring as a result of the criminal act and to the attitude of the offender.

(c) Upon being notified by the sentencing court as to amount of restitution set, the Board shall notify the inmate, or, if released on parole, the parolee and the District Parole Supervisor or the designated representative of the Commission of the amount of restitution.

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

New (b) added; old (b) recodified to (c).  
Amended by R.1997 d.168, effective April 7, 1997.  
See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (c), inserted reference to designated representative of the Commission.

#### 10A:71-6.6 Modification of conditions

(a) The certifying Board members or appropriate Board panel may modify a parolee's conditions of parole at any time for cause.

(b) Except as provided in N.J.A.C. 10A:71-6.4(e), a parolee or the parolee's parole officer may apply to the appropriate Board panel at any time for modification of the conditions of parole.

(c) Such application shall be submitted by the District Parole Supervisor or the designated representative of the Commission at the request of either the parolee or the parolee's parole officer and shall contain the recommendation of the officer and the District Parole Supervisor or the designated representative of the Commission, as appropriate, accompanied by supporting documentation.

(d) If the application is not submitted at the parolee's request, the parolee shall be notified in writing of the proposed modification prior to submission of the application to the Board panel.

(e) The parolee may submit written comments regarding the application to the Board panel; however, such comments must be received within 15 days of the application.

(f) The Board panel shall consider such application and notify the District Parole Supervisor or the designated representative of the Commission, as appropriate, in writing of the decision within 45 days of the receipt of the application.

(g) The District Parole Supervisor or the designated representative of the Commission, as appropriate, shall notify the parolee in writing of any modification of the conditions of parole and shall cause a written record of such modification to be made in the parolee's case file.

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

Cross reference changed from (d) to (e).  
Amended by R.1995 d.109, effective February 21, 1995.  
See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).  
Amended by R.1997 d.168, effective April 7, 1997.  
See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (c), (f), and (g), inserted reference to designated representative of the Commission; and in (c), inserted "District Parole" preceding "Supervisor".

#### 10A:71-6.7 Adjustment hearings; state prison parolees

(a) If the parole officer has probable cause to believe that a State prison parolee has violated a condition of parole, such violation not being a basis for revocation of parole pursuant to N.J.A.C. 10A:71-7, the parole officer may re-

quire that the parolee appear before a hearing officer for a review of the parolee's adjustment.

(b) Such adjustment hearings shall be conducted by a hearing officer appointed by the Chief of the Bureau of Parole.

1. The hearing officer shall be an impartial official and may not be directly involved in supervision of the parolee.

2. Such appointment shall be made by that authority of the Chairperson, and shall in no way limit or otherwise alter the authority of the Chairperson to designate or appoint a hearing officer for adjustment hearings in cases where the Chairperson deems such action appropriate.

(c) At least 14 days prior to the adjustment hearing, the parolee shall be notified in writing as to the time, date, and place of the adjustment hearing; the violation(s) of parole condition(s) alleged; the purpose of the hearing; the possible action which may be taken as a result of the adjustment hearing; and the following rights to which the parolee shall be entitled at the adjustment hearing:

1. The right to appear and speak in his or her own behalf.

2. The right to remain silent.

3. The right to present witnesses to testify in his or her own behalf as to matters relevant to the alleged violation(s) of parole.

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

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

6. The right to waive such hearing.

7. The right to request postponement of such hearing for a period of not more than 14 days.

(d) If the hearing officer determines at the adjustment hearing that the parolee has violated a condition of parole, the hearing officer may order the forfeiture of up to 365 days of commutation time credits granted on the parolee's maximum sentence(s) pursuant to N.J.S.A. 30:4-140.

(e) If the hearing officer orders any such forfeiture of commutation time credits, he or she shall file a notice of such action with the parolee, the Board and the Department within 21 days of the hearing. Such notice shall contain the procedures available to the parolee for appeal of the forfeiture.

(f) Any forfeiture of commutation time credits shall be appealable to the prison Board panel provided one of the following criteria is met:

1. The hearing officer failed to establish a violation of a parole condition.

2. The forfeiture of commutation time credits is unduly harsh or severe.

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

Deleted "or the Chief of the Bureau of Interstate Services"; substituted "Chairperson" for "Board".

**10A:71-6.8 Forfeiture of commutation time credits**

(a) If the preliminary hearing officer pursuant to N.J.A.C. 10A:71-7.4 or the adult Board panel pursuant to N.J.A.C. 10A:71-7.12 determines that a State prison parolee has violated a condition of parole but that such violation is not serious or persistent or that revocation of parole is not desirable, the hearing officer or Board panel may order the forfeiture of up to 365 days of commutation time credits.

(b) Any such action by the preliminary hearing officer shall be appealable to the adult Board panel pursuant to the provisions of N.J.A.C. 10A:71-6.7(f).

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

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

Substituted "adult" for "person".

**10A:71-6.9 Discharge from parole**

(a) The appropriate Board panel may grant any parolee a complete discharge from parole prior to the expiration of the maximum term for which he or she was sentenced, provided that:

1. Such parolee has made a satisfactory adjustment while on parole; and
2. Continued supervision is not required;
3. The parolee has made full payment of any assessment, fine, penalty, lab fee or restitution or the parolee has in good faith established a satisfactory payment schedule; or
4. In the opinion of the Board panel continued supervision is not warranted or appropriate based upon a review of the facts and circumstances considered pursuant to N.J.A.C. 10A:71-7.10, 7.11, 7.12, 7.16 and 7.17, 7.17A or 7.17B.

(b) The Board panel will consider requests for discharge after the following periods of parole supervision have been completed:

1. In the case of adult parolees serving life sentences, after a period of seven years provided the parolee has been under annual supervision status for the final two years.
2. Except as provided above, in the case of juvenile parolees for murder and manslaughter and in the case of adult parolees serving sentences for murder, manslaughter, kidnapping, aggravated sexual assault (including attempts), robbery first degree, arson, aggravated assault second degree, and sale or distribution or sale of controlled dangerous substance and possession of controlled dangerous substance with intent to distribute, after a period of two years provided the parolee is under advanced supervision status.
3. In the case of county parole absconders, after a period of two years from the expiration date of the original maximum sentence, provided the parolee has no known arrests.
4. In the case of juvenile and young adult parole absconders, after a period of three years from the date

the parolee became an absconder, provided the parolee has no known arrests and provided the original maximum sentence has expired.

5. In the case of adult parole absconders, after a period of 10 years from the date the parolee became an absconder or after a period of five years from the expiration of the original maximum sentence, provided the parolee has no known arrests.

6. In all other cases, after a period of one year.

(c) If the District Parole Supervisor or the designated representative of the Commission, as appropriate, determines that a parolee has made exceptional progress while on parole supervision, the District Parole Supervisor or the designated representative of the Commission, as appropriate, may request that a waiver of the time periods above be granted by the appropriate Board panel. Such waiver may be granted by the appropriate Board panel for good cause.

(d) When a parolee has completed two years of parole supervision and thereafter on an annual basis, the parole officer and the District Parole Supervisor or the designated representative of the Commission, as appropriate, shall review the case to determine whether good reason exists to require continued supervision.

1. If the District Parole Supervisor or the designated representative of the Commission, as appropriate, determines at such review that good reason exists to require continued supervision, and unfavorable discharge determination shall be made, and a statement setting forth such determination and the reasons therefor shall be entered on the chronological supervision report.

2. If the District Parole Supervisor or the designated representative of the Commission, as appropriate, determines that good reason does not exist to require continued supervision and that the parolee qualifies for discharge pursuant to (a) above, a favorable discharge recommendation shall be submitted to the appropriate Board panel.

3. The appropriate Board panel shall review requests for discharge and advise the District Parole Supervisor or the designated representative of the Commission, as appropriate, of its decision within 45 days of receipt of the recommendation.

(e) The appropriate Board panel may provide a discharge from continued parole supervision:

1. In the case of a parolee who has received a non-custodial term for the commission of an offense and the parolee is to be under community supervision through a probation or parole agency in another jurisdiction; or
2. The parolee has clearly established that continued parole supervision under a community plan in this State or consideration of a formal transfer of supervision to another state would not be conducive to the timely continuation of the parolee's community reintegration.

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

(g) A term of post-incarceration supervision imposed pursuant to N.J.S.A. 2A:4A-44(d)5 may be terminated by the juvenile Board panel if the juvenile has made a satisfactory adjustment in the community while on parole or under such supervision, if continued supervision is not required and if the juvenile has made full payment of any fine or restitution.

As amended, R.1981 d.324, effective September 10, 1981.

See: 13 N.J.R. 440(a), 13 N.J.R. 598(a).

New (b) and (c) added; old (b) and (c) renumbered as (d) and (e).

As amended, R.1985 d.213, effective May 6, 1985.

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

Section substantially amended.

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

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

Added (b)3; renumbered old (b)3-5 as 4-6.

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

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

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

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

In (a)4, inserted additional N.J.A.C. reference; in (c) and (d), inserted references to designated representative of the Commission; and added (g).

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

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

In (a)4, changed N.J.A.C. references.

#### **10A:71-6.10 Transfer of parole supervision to out-of-State jurisdiction**

(a) The appropriate Board panel may permit a parolee to reside outside the State pursuant to the provisions of the uniform act for out-of-State parolee supervision (N.J.S.A. 2A:168-14 et seq.) and the interstate compact on juveniles (N.J.S.A. 9:23-1 et seq.) if the Board panel is satisfied that such change will not result in a substantial likelihood that the parolee will commit an offense which would be a crime under the laws of this State.

(b) If a parolee seeks to transfer formal supervision of his or her case to another jurisdiction, the parolee shall notify his or her parole officer and complete the documents required by statutory or regulatory provisions.

(c) The District Parole Office or the designated representative of the Commission, as appropriate, shall forward to the Board the completed required documents, a copy of an up-to-date chronological supervision report on the parolee's case, an assessment of the parolee's community adjustment, a copy of the parole certificate and a copy of any other document deemed relevant to the parolee's case.

(d) Upon receipt of the material submitted pursuant to (c) above, the appropriate Board panel shall review the parolee's case and determine whether the parolee is a suitable candidate for the transfer of parole supervision to the designated out-of-State jurisdiction.

(e) If the Board panel determines that transfer of the supervision of the parolee's case to an out-of-State jurisdiction is appropriate, the Board panel shall submit the case materials to the Department's Office of Interstate Services or the Commission, as appropriate. The Office of Interstate Services or the Commission, as appropriate, pursuant to the relevant statutory and regulatory provisions, shall forward the parolee's request for transfer of parole supervision to the designated out-of-State jurisdiction for investigation.

(f) Upon the Board panel receiving the completed community investigation by the out-of-State jurisdiction, the Board panel shall review the community plan approved by the out-of-State jurisdiction. If the community plan is deemed acceptable by the Board panel, the Board panel shall notify in writing the Office of Interstate Services or the Commission, as appropriate, and the District Parole Office or the designated representative of the Commission, as appropriate, that supervision of the parolee's case may be transferred to the out-of-State jurisdiction. The Office of Interstate Services or the Commission, and/or the District Parole Office or the designated representative of the Commission, as appropriate, shall notify the parolee of the Board panel's decision and issue the necessary travel documents.

(g) The Board panel shall not authorize the transfer of parole supervision to an out-of-State jurisdiction when:

1. The out-of-State jurisdiction has determined not to accept supervision of the parolee's case; or
2. The parole plan approved by the out-of-State jurisdiction is substantially different from the original parole plan submitted and reviewed by the Board panel and the alternate parole plan is not deemed appropriate by the Board panel.

(h) If the Board panel upon reviewing the parolee's case pursuant to (d), (f) or (g) above determines to deny authorization for the transfer of the parolee's case to an out-of-State jurisdiction, the Board panel shall notify in writing the Office of Interstate Services or the Commission, as appropriate, and the District Parole Office or the designated representative of the Commission, as appropriate, of the

determination. The District Parole Office or the designated representative of the Commission, as appropriate, shall notify the parolee of the determination of the Board panel.

New Rule, R.1995 d.109, effective February 21, 1995.

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

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

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

In (c), (e), (f), and (h), inserted references to Commission or to a designated representative of the Commission.

#### 10A:71-6.11 Community supervision for life

(a) Pursuant to N.J.S.A. 2C:43-6.4(a), a court imposing sentence on a person who has been convicted of aggravated sexual assault, sexual assault, aggravated criminal sexual contact, kidnapping pursuant to N.J.S.A. 2C:13-1(c)2, endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of a child pursuant to N.J.S.A. 2C:24-4(a), luring or an attempt to commit any such offense shall include, in addition to any sentence authorized by the Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq., a special sentence of community supervision for life.

(b) The special sentence of community supervision for life shall commence pursuant to N.J.S.A. 2C:43-6.4(b) upon the completion of the sentence imposed pursuant to the Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq. An offender serving a special sentence of community supervision for life shall be supervised by the Bureau of Parole as if on parole and subject to any special conditions established by the appropriate Board panel and to the following general conditions. The offender shall:

1. Obey all laws and ordinances;
2. Report to the assigned parole officer as instructed;
3. Notify the assigned parole officer immediately after any arrest, after being served with or receiving a complaint or summons and after accepting any pre-trial release including bail;
4. Notify the assigned parole officer immediately upon the issuance by the appropriate court, pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., of an order granting emergency relief, a temporary or final restraining order or an order establishing conditions of release or bail in a criminal matter or offense arising out of a domestic violence situation, and comply with any condition established within the respective order until the order is dissolved by the appropriate court or until a condition is modified or discharged by the appropriate court;
5. Reside at a residence approved by the assigned parole officer;
6. Obtain the permission of the assigned parole officer prior to any change of address or residence;

7. Obtain the permission of the assigned parole officer prior to leaving the state of the approved residence for any purpose;

8. Refrain from owning or possessing any firearm, as defined in N.J.S.A. 2C:39-1f, for any purpose;

9. Refrain from owning or possessing any weapon enumerated in N.J.S.A. 2C:39-1r;

10. Refrain from the purchase, use, possession, distribution or administration of any narcotic or controlled dangerous substance, controlled dangerous substance analog, imitation controlled dangerous substance or any paraphernalia related to such substances except as prescribed by a physician;

11. Cooperate in any medical and/or psychological examination or tests as directed by the assigned parole officer;

12. Participate in and successfully complete an appropriate community or residential counseling or treatment program as directed by the assigned parole officer;

13. Submit to drug or alcohol testing at any time as directed by the assigned parole officer;

14. Obtain the permission of the assigned parole officer prior to securing, accepting or engaging in any employment or business activity and prior to a change of employment;

15. Notify promptly the assigned parole officer upon becoming unemployed;

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

17. Comply with any curfew established by the assigned parole officer;

18. Permit the assigned parole officer to visit the offender at any time at home or elsewhere and permit confiscation of any contraband observed in plain view by the parole officer;

19. Notify, as directed by the assigned parole officer, an employer or any third party of the offender's criminal record or personal history or characteristics, and permit the parole officer to make such notifications and to confirm compliance with such notification requirement;

20. Comply with any other reasonable instruction or directive given by the assigned parole officer; and

21. Comply with any special condition imposed by the District Parole Supervisor, an Assistant District Parole Supervisor, or the designated representative of the District Parole Supervisor and which is affirmed by the State Parole Board.

(c) If the victim(s) of an offense specified in (a) above is a minor, an offender serving a special sentence of community supervision for life shall, in addition to the conditions specified in (b) above, be subject to the following conditions. The offender shall:

1. Refrain from initiating, establishing or maintaining contact with any minor; and

2. Refrain from attempting to initiate, establish or maintain contact with any minor; and

3. Refrain from residing with any minor without the prior approval of the assigned parole officer.

(d) The following circumstances are deemed exceptions to the conditions specified in (c) above:

1. When the minor is engaged in a lawful commercial or business activity, the offender may engage in the lawful commercial or business activity, provided the activity takes place in an area open to the public view;

2. When the minor is in the physical presence of his or her parent or legal guardian;

3. When the offender is present in a public area, as long as the offender is not associating with a minor, and the public area is not one frequented mainly or exclusively by minors; or

4. When the appropriate court may authorize contact with a minor.

(e) If the sentencing court determines that the conduct of the person convicted of an offense specified in (a) above was characterized by a pattern of repetitive and compulsive behavior and commits the offender to the Adult Diagnostic and Treatment Center for a program of specialized treatment, the offender serving a special sentence of community supervision for life shall, in addition to the conditions specified in (b) and (c) above, participate in and successfully complete any program of counseling or therapy identified by the treatment staff of the Adult Diagnostic and Treatment Center.

(f) If the sentencing court determines that the conduct of the person convicted of an offense specified in (a) above was characterized by a pattern of repetitive and compulsive behavior and commits the offender to the Adult Diagnostic and Treatment Center and if upon release from confinement the appropriate county prosecutor determines pursuant to N.J.S.A. 2C:7-8 that the offender is a high risk to re-offend, the offender serving a special sentence of community supervision for life shall, in addition to the conditions specified in (b), (c) and (e) above, submit every two years to an evaluation at the Adult Diagnostic and Treatment Center and participate in and successfully complete any program of counseling or therapy identified by treatment staff.

(g) If the sentencing court determines that the conduct of the person convicted of an offense specified in (a) above was characterized by a pattern of repetitive and compulsive behavior and if upon release from confinement the appropriate county prosecutor determines pursuant to N.J.S.A. 2C:7-8 that the offender is a high risk to re-offend, the offender serving a special sentence of community supervision for life shall, in addition to the conditions specified in (b), (c), (e) and (f) above be subject to the following conditions. The offender shall:

1. Refrain from any use of alcohol; and

2. Submit to a search conducted by the assigned parole officer, without a warrant, of one's person, place of residence, vehicle or other personal property at any time the assigned parole officer has a reasonable or articulable basis to believe that the search will produce contraband or evidence that a condition of supervision has been violated, is being violated or is about to be violated and permit the confiscation of any contraband.

(h) The search without a warrant pursuant to (g)2 above shall be conducted in accordance with the following standards:

1. A search of an offender may be conducted at any time when there is a reasonable or articulable basis to believe that the search will produce contraband or evidence that a condition of supervision has been violated, is being violated or is about to be violated.

2. Searches of offenders shall be carried out in a reasonable manner and shall be reasonably related to the purpose of supervision and the function of the assigned parole officer.

3. The search of an offender shall be conducted while the offender is fully clothed and shall include, but is not limited to, the touching of the offender's body through clothing, a thorough examination into pockets, cuffs and seams, the touching of the offender's hair, and all personal property within the offender's immediate control.

4. A search of an offender may be conducted by a parole officer of either sex.

5. Parole officers are not authorized to conduct strip or body cavity searches.

6. Offenders may be subject to a pat-down of the outer clothing to determine whether they are in possession of a weapon.

7. Offenders shall be searched prior to being transported by a parole officer.

8. A parole officer may conduct a search of an offender's residence when:

i. There is a reasonable or articulable basis to believe that evidence of a violation of a condition of supervision would be found in the residence or contraband which includes any item that the offender cannot pos-

sess under the conditions of supervision is located in the residence; and

ii. The search is approved by the parole officer's supervisor or circumstances exist which require immediate action without prior approval from the supervisor.

9. Where the residence is jointly owned or shared by an offender and another person(s), the parole officer may conduct a search of the residence in accordance with (h)8 above. The parole officer may search only those objects that may reasonably be concluded to be owned or possessed by the offender and may search those areas of the residence that are jointly shared by both the offender and the other person, even if that person(s) objects to the search.

10. A parole officer may not conduct a search of the offender's residence under any circumstances unless the offender or an adult member of the household is physically present.

11. Forcible entry by a parole officer into the residence of an offender for the purpose of conducting a search for contraband or other evidence of the commission of an offense is prohibited.

12. A parole officer may stop and conduct a search of a motor vehicle owned by an offender or a motor vehicle not owned but driven by an offender where:

i. There is a reasonable or articulable basis to believe that evidence of a violation of a condition of supervision would be found in the motor vehicle or contraband which includes any item that the offender cannot possess under the conditions of supervision is located in the vehicle; and

ii. The search is approved by the parole officer's supervisor or circumstances exist which require immediate action without prior approval from the supervisor.

13. In an authorized motor vehicle search, a parole officer may search all objects that appear to be owned or possessed by the offender.

14. The parole officer shall record incidents in which a search of an offender, residence or motor vehicle was conducted in the chronological supervision report. The following information shall be included in the chronological supervision report:

i. A description of the events leading up to the search;

ii. The parole officer's reasonable or articulable basis for the search;

iii. A description and the disposition of any items, articles, or materials determined to be contraband found as a result of the search; and

iv. Any other relevant facts or comments about the search.

(i) Any contraband confiscated pursuant to (b)18 and (g)2 above shall be processed in accordance with the following standards:

1. The parole officer making a seizure of contraband from an offender shall submit criminal contraband to the local law enforcement jurisdiction or county prosecutor's office. All other contraband shall be retained in the custody of the parole officer.

2. The parole officer shall record the incident, including the description and disposition of the contraband in the chronological supervision report.

3. Precautions shall be taken to assure the continuity of possession of contraband in accordance with accepted legal procedures.

(j) Prior to an offender, subject to the provisions of N.J.S.A. 2C:43-6.4, being released from custody at the expiration of the term of incarceration or being terminated from probation or parole supervision at the expiration of the term of probation or incarceration respectively, the appropriate Board panel shall issue a written certificate which shall be delivered to the offender by a designated representative of the Board or Bureau of Parole, as appropriate.

(k) The certificate shall include the conditions of community supervision for life as specified in (b), (c), (e), (f) and (g) above.

(l) At the time of delivery of the certificate, the conditions of community supervision for life shall be explained to the offender.

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

(n) Additional special conditions may be imposed by the District Parole Supervisor, an Assistant District Parole Supervisor or the designated representative of the District Parole Supervisor when it is the opinion that such conditions would reduce the likelihood of recurrence of criminal behavior. The offender and the Board shall be given written notice upon the imposition of such conditions.

1. Upon notice being received by the Board, the appropriate Board panel shall review the offender's case and determine whether to vacate, modify or affirm the additional special condition(s).

2. The Board panel shall notify the District Parole Supervisor of its determination within three working days of receipt of notice of the imposition of the additional special condition(s).

3. The District Parole Supervisor shall notify the offender in writing of the determination of the Board panel and shall cause a written record of such notice to be made in the offender's case file.

4. A special condition shall not be deemed effective until affirmed by the appropriate Board panel.

(o) Pursuant to N.J.S.A. 2C:43-6.4(d), an offender who violates a condition of a special sentence of community supervision without good cause is guilty of a crime of the fourth degree.

(p) An offender shall remain under community supervision for life until such time as the appropriate court shall terminate the supervision status pursuant to N.J.S.A. 2C:43-6.4(c).

New Rule, R.1998 d.144, effective March 16, 1998.

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

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

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

In (h), inserted a new 10 and 11, and recodified former 10 through 12 as 12 through 14.

## SUBCHAPTER 7. REVOCATION OF PAROLE

### 10A:71-7.1 Commencement of revocation proceedings

Whenever the parole officer has probable cause to believe that a parolee under his supervision has seriously or persistently violated the conditions of parole, the parole officer shall file a report with the District Parole Supervisor requesting the commencement of revocation proceedings.

### 10A:71-7.2 Issuance of warrants

(a) The parole officer shall request that a parole violation warrant be issued when the parole officer has probable cause to believe that the parolee has seriously or persistently violated parole conditions by conduct other than new criminal charges or new acts of delinquency, and where evidence indicates that the parolee poses a danger to the public safety or may not appear at revocation proceedings.

(b) In accordance with the provisions of N.J.S.A. 30:4-123.62, the Chief of the Bureau of Parole, the Supervisor of the Office of Interstate Services, District Parole Supervisors, and the designated supervisory representatives of the Commission are hereby authorized to issue warrants on behalf of the Chairperson.

(c) In the absence of the individual(s) authorized to issue warrants pursuant to (b) above, such individual(s) shall designate an acting chief or acting supervisor for the purpose of issuing warrants.

(d) If an emergency exists and if the individual(s) authorized to issue warrants pursuant to (b) and (c) above are not available, a parole officer may issue a warrant pending review by the individual(s) authorized to issue warrants pursuant to (b) and (c) above.

1. When a warrant is issued pursuant to (d) above, the individual(s) authorized to issue warrants pursuant to (b) or (c) above shall review the basis for the issuance of such warrant within 48 hours of the issuance of the warrant.

2. If such individual determines that the issuance of the warrant is not necessary, the warrant shall be immediately withdrawn.

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

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

(b) deleted "of the Board"; (c) added "the basis for the issuance of".

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

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

In (b), inserted reference to designated supervisory representatives of the Commission.

#### Case Notes

Trial judge vacated all aspects of previous sentence and imposed new ones following violation of probation; no double penalties. *State v. Harvey*, 273 N.J.Super. 572, 642 A.2d 1052 (A.D.1994).

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

Parolee arrested on new charge was entitled to award of jail credit for time served while awaiting disposition of new charge. *State v. Williams*, 266 N.J.Super. 154, 628 A.2d 837 (L.1993).

Parolee charged with parole violation need not be returned to custody even after probable cause was found. *State v. Williams*, 266 N.J.Super. 154, 628 A.2d 837 (L.1993).

#### 10A:71-7.3 Motion for accelerated revocation

(a) Upon the arrest of a parolee for an alleged offense committed while on parole or upon the detention of a juvenile for an alleged act of delinquency committed while on parole, it shall be the responsibility of the local police department to immediately notify the prosecuting authority and the parole officer of the fact of the parolee's arrest. Notification to the prosecutor may be restricted pursuant to instructions from the prosecutor's office.

(b) If the prosecuting authority, the Chief of the Bureau of Parole or the Commission determines that the charges against the parolee are of a serious nature and the parolee otherwise poses a danger to public safety, the prosecuting authority, the Chief of the Bureau of Parole or the Commission may apply in writing to the Chairperson or his or her designated representative for the prompt initiation of revocation proceedings.

1. Such application shall include:

i. The amount of bail, if any, set in the case; and

ii. An evaluation of the likelihood of the parolee posting bail or being released from detention; and

iii. Appropriate discovery material which will clearly document that the parolee may have committed a new crime or an act of delinquency; and

iv. The reasons why the parolee poses a danger to public safety.

2. If the application is submitted by a prosecuting authority, such application shall also include:

i. A concise, comprehensive synopsis of the specific facts, statements or other evidence implicating the parolee in the commission of the alleged crime; and

ii. An affirmative representation that the case is not subject to any plea agreement which may result in the imposition of a non-custodial term or a custodial term of less than one year.

3. If the application is submitted by the Chief of the Bureau of Parole or the Commission, such application shall also include an up-to-date chronological supervision report on the parolee's case.

(c) Upon receipt of an application form a prosecuting authority pursuant to (b) above, the Chairperson or his or her designee shall direct the Bureau of Parole or the Commission to submit within three days for consideration an up-to-date chronological supervision report on the parolee's case.

(d) Upon review of the application and chronological supervision report, a determination shall be made by the Chairperson and a designated Board member or a designated two-member Board panel as to whether the charges against the parolee are of a serious nature, whether the parolee otherwise poses a danger to public safety and whether the revocation process shall be initiated. The Chairperson or his or her designated representative shall advise the prosecuting authority, the Chief of the Bureau of Parole or the Commission and the District Parole Supervisor or the designated representative of the Commission, as appropriate, as to whether the revocation process shall or shall not be initiated.

(e) If the revocation process is initiated pursuant to this subsection, the Chairperson or his or her designated representative shall immediately authorize the issuance of a warrant for the arrest of the parolee.

(f) If the revocation process is initiated at the request of a prosecuting authority, a representative of the prosecuting authority shall appear at any preliminary and any revocation hearing in order to present evidence and/or testimony in regard to the parolee's alleged violation of parole conditions. It shall be the responsibility of the prosecuting authority to insure the appearance of any witness(es) deemed necessary for the presentation of the case against the parolee.

(g) If a parolee testifies at any preliminary or any revocation hearing initiated pursuant to this subsection, the parolee shall be informed that, pursuant to N.J.S.A. 30:4-123.60, his or her testimony and the evidence derived therefrom shall not be used against him or her in a subsequent criminal prosecution or delinquency adjudication.

(h) If the prosecuting authority makes application for the initiation of revocation proceedings pursuant to this section, he or she shall be notified of any subsequent action on the revocation case by a hearing officer, Board panel or Board.

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

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

(b)3 added the word "clearly"; (e) added "and/or testimony in regard to".

Amended by R.1993 d.398, effective August 16, 1993.

See: 25 N.J.R. 435(a), 25 N.J.R. 3829(a).

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

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

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

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

In (a), substituted "offense" for "crime; in (b), (b)3, (c) and (d), inserted reference to Commission or to a designated representative of the Commission; and in (g), substituted "delinquency adjudication" for "delinquency prosecution".

#### 10A:71-7.4 Preliminary hearing

When a parolee is arrested on a parole violation warrant, a preliminary hearing shall be conducted by a hearing officer to determine whether probable cause exists to believe that the parolee has seriously or persistently violated conditions of parole and whether revocation of parole is desirable.

#### 10A:71-7.5 Preliminary hearing; scheduling

(a) The preliminary hearing shall be conducted within 14 days of the parolee's return to custody as a parole violator, unless the hearing officer or the parolee requests a postponement of such hearing.

(b) If the parolee requests a postponement of the preliminary hearing, such postponement shall be granted by the hearing officer. Such request shall be made in writing, and the hearing officer shall record such request in the parolee's case record.

(c) If the hearing officer requests a postponement of the preliminary hearing, such postponement, if granted, shall not exceed 14 days from the original deadline determined pursuant to (a) above.

(d) If the request for postponement by the hearing officer is due to unanticipated scheduling problems or other emergent circumstances, such request shall be granted by the appropriate Board panel.

#### 10A:71-7.6 Designation of preliminary hearing officers

(a) Preliminary hearings shall be conducted by a hearing officer appointed by the Chief of the Bureau of Parole or by the Commission, as appropriate.

(b) The designated hearing officer shall be an impartial official and may not be directly involved in supervision of the parolee or otherwise previously involved in the parolee's case.

(c) Such appointment shall be made by authority of the Chairperson, and shall in no way limit or otherwise alter the authority of the Chairperson to designate or appoint a hearing officer for preliminary hearings in cases where the Chairperson deems such action appropriate.

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

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

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

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

In (a), inserted reference to the Commission.

#### 10A:71-7.7 Preliminary hearing; notice of hearing

(a) It shall be the responsibility of the parole officer, District Parole Supervisor or the designated representative of the Commission, as appropriate, to give written notice to the parolee of the time, date and place of the preliminary hearing at least three days prior to the preliminary hearing unless the parolee waives such notice.

(b) Such notice shall be served upon the parolee by personal service or by regular mail to the institution where the parolee is housed or to the address of record.

(c) Such notice shall inform the parolee of the purpose of the hearing; the violation(s) of parole conditions alleged; the time, date, place and circumstances of the alleged violation(s); the possible action which may be taken as a result of revocation proceedings; and the following rights to which the parolee shall be entitled at the preliminary hearing:

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

2. The right to representation by an attorney or such other qualified person as the parolee may retain, or if the parolee is determined to be indigent, the right to representation by an attorney assigned from the list maintained in accordance with R.3:27-2, provided the parolee first makes such a request based on a timely and colorable claim that:
  - i. The parolee did not commit the alleged violation of the specified parole condition(s); or
  - ii. The parolee did commit the violation of the specified parole condition(s), but there are substantial reasons which justified or mitigated the violation(s) and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present.

3. The right to remain silent.

**10A:71-7.16B (Reserved)**

Recodified to N.J.A.C. 10A:71-7.17B by R.1999 d.252, effective August 2, 1999.

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

**10A:71-7.17 Board panel action; schedule of future parole eligibility dates upon revocation of parole for inmates who have violated parole prior to October 17, 1994**

(a) This section applies to inmates who violated parole prior to October 17, 1994. After consideration of the hearing officer's hearing summary and opinion and any written exceptions thereto, a two member Board panel shall determine whether to revoke parole pursuant to N.J.A.C. 10A:71-7.12. The Board panel members shall not receive or consider any ex parte communication. The parolee's case shall be decided on the basis of the established record. If parole is revoked, the two-member Board panel shall, based upon the following schedule, establish a future parole eligibility date upon which the inmate shall be primarily eligible for parole.

(b) Except as provided herein, upon revocation of parole, an adult inmate shall serve 12 months, a young adult inmate shall serve nine months, and a juvenile inmate shall serve six months, if the inmate has committed one of the following violations of parole:

1. Failure to report to the parole officer, N.J.A.C. 10A:71-6.4(a)2, provided that such parolee is declared by the District Parole Supervisor or designated representative of the Commission, as appropriate, to be missing from parole supervision.
2. Owning or possessing any firearm, as defined in N.J.S.A. 2C:39-1f, for any purpose, N.J.A.C. 10A:71-6.4(a)6.
3. Owning or possessing any weapon enumerated in N.J.S.A. 2C:39-1r, N.J.A.C. 10A:71-6.4(a)7.
4. Failure to refrain from the use, possession or distribution of a controlled dangerous substance, controlled substance analog or imitation controlled dangerous substance as defined in N.J.S.A. 2C:35-2 and N.J.S.A. 2C:35-11, N.J.A.C. 10A:71-6.4(a)8.
5. Failure to comply with any special condition of parole imposed pursuant to N.J.A.C. 10A:71-6.4(d) or 6.4(e).

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

(d) Except as provided herein, upon revocation of parole, an adult inmate shall serve eight months, a young adult inmate shall serve six months and a juvenile inmate shall

serve four months, if the inmate has violated, by non-criminal conduct, any parole condition not specified under (b), above.

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

(f) Except as provided herein, upon revocation of parole, an adult inmate revoked for commission of a crime while on parole shall serve:

1. Except as provided in (g) and (p) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for commission of a fourth degree crime shall serve less than eight nor more than 12 months.
2. Except as provided in (g) and (p) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for commission of a third degree crime shall serve less than 12 nor more than 16 months.
3. Except as provided in (g) and (p) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for commission of a second degree crime shall serve less than 16 nor more than 28 months.
4. Except as provided in (g) and (p) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for commission of a first degree crime shall serve less than 28 nor more than 48 months.
5. Except as provided in (g) and (p) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for the commission of the crimes of murder or kidnapping shall serve less than four years, eight months nor more than eight years, four months.
6. Upon the second or subsequent revocation of parole, an adult inmate revoked for commission of a crime while on parole shall serve whatever time remains on the maximum sentence(s) or 10 years, whichever is less.

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

1. The two-member adult Board panel shall establish the following:
  - i. A term of 10 months for the commission of a fourth degree crime;
  - ii. A term of 14 months for the commission of a third degree crime;

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

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

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

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

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

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

2. Except as provided in (i) and (p) below, a term of 10 months for the commission of a third degree crime or possession of controlled dangerous substance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The parolee has demonstrated a negative attitude to parole supervision.
2. The parolee was under parole supervision for a period of less than six months.
3. The parolee has previous parole failures.
4. The parolee has extensive prior convictions.
5. The parolee has violated more than one parole condition.
6. The parolee was guilty of substance abuse while on parole.
7. The parolee's original sentence was for a violent offense.

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

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

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

2. The two-member Board panel shall notify the inmate and the inmate's attorney, in writing, pursuant to N.J.A.C. 10A:71-7.18 that a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date, pursuant to this section has not been established and the reasons therefor and that a three-member Board panel review of the record will be scheduled.

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

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

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

6. If the three-member Board panel fails to reach an unanimous decision, the three-member Board panel shall notify the inmate and the inmate's attorney, in writing, that his 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 (p)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.

(q) 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.

(r) 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.

(s) If an inmate's maximum sentence will expire prior to the future parole eligibility date that could be established pursuant to (b), (c), (d), (e), (f), (g), (h), (i) above or the future parole release date that could be established pursuant to (j) or (k) 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.

(t) The prior provisions of (f), (g), (h), (j) and (k) shall apply to inmates who have violated their parole prior to March 5, 1990 and shall continue in effect for that purpose. The amendments to (f), (g), (h), (i), (j) and (k) shall apply to inmates who have violated their parole on or after March 5, 1990. The amendment to (f)6 above shall be applicable to any inmate presently incarcerated for violation of parole.

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.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.141, effective March 5, 1990.

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

Established maximum of 10 years in (f)6, changes in (s) and effective date as established in (t); (u) deleted.

Amended by R.1994 d.18, effective January 3, 1994.

See: 25 N.J.R. 3597(a), 26 N.J.R. 236(a).

Amended by R.1994 d.511, effective October 17, 1994.

See: 26 N.J.R. 2516(a), 26 N.J.R. 4191(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 (b)1, 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 (b)1, changed N.J.A.C. reference.

Administrative correction.

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

Recodified from N.J.A.C. 10A:71-7.16 and amended by R.1999 d.252, effective August 2, 1999.

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

In (p)2, changed N.J.A.C. reference. Former N.J.A.C. 10A:71-7.17, Revocation hearing; notice of decision, recodified to N.J.A.C. 10A:71-7.18.

#### Case Notes

Reconvening of parole revocation hearing before hearing officer and prior to any final determination on merits did not violate parolee's due process rights; Federal and State double jeopardy guarantees do not prohibit taking of additional evidence after completion of initial hearing before hearing officer. N.J. State Parole Bd. v. Mannson, 220 N.J. Super. 566, 533 A.2d 58 (App.Div.1987) certification denied, 110 N.J. 194, 540 A.2d 188 (1988).

#### **10A:71-7.17A Board panel action; schedule of future parole eligibility dates upon revocation of parole for inmates who violated parole on or after October 17, 1994 and prior to December 4, 1995**

(a) This section applies to inmates who violated parole on or after October 17, 1994 and prior to December 4, 1995. After consideration of the hearing officer's hearing summary and opinion and any written exceptions thereto, a two-member Board panel shall determine whether to revoke parole pursuant to N.J.A.C. 10A:71-7.12. The Board panel members shall not receive or consider any ex parte communication. The parolee's case shall be decided on the basis of the established record.

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

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

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

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

iii. Establishing appropriate special parole conditions.

3. If parole is revoked in the case of an adult or young adult parolee for the violation of parole condition N.J.A.C. 10A:71-6.4(a)1 or (a)6, the two member Board panel shall establish a future parole eligibility date upon which the inmate shall be primarily eligible for parole.

(b) Except as provided in this section, upon revocation of parole, an adult inmate shall serve 12 months and a young adult inmate shall serve nine months if the inmate has committed a violation of condition of parole N.J.A.C. 10A:71-6.4(a)6.

(c) Except as provided in this section, upon revocation of parole, a juvenile inmate shall serve six months, if the inmate has committed one of the following violations of parole:

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

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

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

4. Failure to refrain from the use, possession or distribution of a controlled dangerous substance, controlled substance analog or imitation controlled dangerous substance as defined in N.J.S.A. 2C:35-2 and N.J.S.A. 2C:35-11, N.J.A.C. 10A:71-6.4(a)8; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the characteristics and past record of the parolee warrant such adjustment.

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

1. Except as provided in (j) and (q) below, a term of eight months for the commission of a fourth degree crime;
2. Except as provided in (j) and (q) below, a term of 10 months for the commission of a third degree crime;
3. Except as provided in (j) and (q) below, a term of 16 months for the commission of a second degree crime;
4. Except as provided in (j) and (q) below, a term of 24 months for the commission of a first degree crime; and
5. Except as provided in (j) and (q) below, a term of 30 months for the commission of the crimes of murder or kidnapping.

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

1. Two months in the case of the commission of a fourth degree crime;
2. Four months in the case of the commission of a third degree crime or possession of controlled dangerous substance;
3. Six months in the case of the commission of a second degree crime, sale or distribution of controlled dangerous substance or possession of controlled dangerous substance with intent to distribute;
4. Eight months in the case of the commission of a first degree crime; and
5. Ten months in the case of the commission of the crimes of murder or kidnapping.

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

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

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

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

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

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

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

1. Two months in the case of the commission of a fourth degree crime or an offense which constitutes a crime of the fourth degree if committed by an adult;
2. Four months in the case of the commission of a third degree crime or an offense which constitutes a crime of the third degree if committed by an adult;
3. Six months in the case of the commission of a second degree crime or an offense which constitutes a crime of the second degree if committed by an adult;
4. Eight months in the case of the commission of a first degree crime or an offense which constitutes a crime of the first degree if committed by an adult; and
5. Ten months in the case of the crime of murder or kidnapping or an offense which constitutes the crime of murder or kidnapping if committed by an adult.

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

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

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

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

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

1. The parolee has demonstrated a negative attitude to parole supervision.
2. The parolee was under parole supervision for a period of less than six months.
3. The parolee has previous parole failures.
4. The parolee has extensive prior convictions.
5. The parolee has violated more than one parole condition.
6. The parolee was guilty of substance abuse while on parole.
7. The parolee's original sentence was for a violent offense.

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

1. If, in the opinion of a two-member Board panel revoking parole, the future parole eligibility date or, in the case of a juvenile inmate, the future parole release

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

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

2. The two-member Board panel shall notify the inmate and the inmate's attorney, in writing, pursuant to N.J.A.C. 10A:71-7.18 that a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date, pursuant to this section has not been established and the reasons therefor and that a three-member Board panel review of the record will be scheduled.

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

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

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

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

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

8. The Board's establishment of a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date shall be based on the review of the record. Upon disposition of the case, the Board shall state in writing to the inmate and the inmate's attorney the reasons for the establishment of a future parole

eligibility date or, in the case of a juvenile inmate, a future parole release date, which differs from that otherwise required by the provisions of this section.

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

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

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

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

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

Administrative Correction.

See: 26 N.J.R. 4771(a).

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

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

Amended by R.1995 d.614, effective December 4, 1995.

See: 27 N.J.R. 3274(b), 27 N.J.R. 4891(a).

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

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

In (c)1, substituted "designated representative of the Commission to" for "District Parole Supervisor".

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

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

In (c)1, changed N.J.A.C. reference.

Recodified from N.J.A.C. 10A:71-7.16A and amended by R.1999 d.252, effective August 2, 1999.

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

In (q)2, changed N.J.A.C. reference.

**10A:71-7.17B Board panel action; schedule of future parole eligibility dates upon revocation of parole for inmates who violated parole on or after December 4, 1995**

(a) This section applies to inmates who violated parole on or after December 4, 1995. After consideration of the hearing officer's hearing summary and opinion and any written exceptions thereto, a two-member Board panel shall determine whether to revoke parole pursuant to N.J.A.C. 10A:71-7.12. The Board panel members shall not receive or consider any ex parte communication. The parolee's case shall be decided on the basis of the established record.

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

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

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

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

- i. Failure to report to the parole officer, N.J.A.C. 10A:71-6.4(a)2, provided that such parolee is declared by the District Parole Supervisor or the designated representative of the Commission, as appropriate, to be missing from parole supervision;
- ii. Failure to notify the parole officer immediately upon the issuance of an order granting emergency relief, a temporary or final restraining order or an order establishing conditions of release or bail in a criminal matter or offense arising out of a domestic violence situation. Failure to comply with any condition established within the respective order until the order is dissolved by the appropriate court or until a condition is modified or discharged by the appropriate court, N.J.A.C. 10A:71-6.4(a)4;
- iii. Owning or possessing any firearm, as defined in N.J.S.A. 2C:39-1f, for any purpose, N.J.A.C. 10A:71-6.4(a)6;
- iv. Owning or possessing any weapon enumerated in N.J.S.A. 2C:39-1r, N.J.A.C. 10A:71-6.4(a)7;
- v. Failure to refrain from the use, possession or distribution of a controlled dangerous substance, controlled substance analog or imitation controlled dangerous substance as defined in N.J.S.A. 2C:35-2 and N.J.S.A. 2C:35-11, N.J.A.C. 10A:71-6.4(a)8; or
- vi. Failure to comply with any special condition of parole imposed pursuant to N.J.A.C. 10A:71-6.4(d) or (e).

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

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

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

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

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

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

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

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

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

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

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

parole, the two-member adult Board panel shall establish such terms as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. The parolee has no previous convictions; and/or

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

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

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

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

3. The parolee has previous parole failures;

4. The parolee has extensive prior convictions;

5. The parolee has violated more than one parole condition;
6. The parolee was guilty of substance abuse while on parole; and/or
7. The parolee's original sentence was for a violent offense.

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

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

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

2. The two-member Board panel shall notify the inmate and the inmate's attorney, in writing, pursuant to N.J.A.C. 10A:71-7.18 that a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date, pursuant to this section has not been established and the reasons therefor and that a three-member Board panel review of the record will be scheduled.

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

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

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

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

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

8. The Board's establishment of a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date shall be based on the review of the record. Upon disposition of the case, the Board shall state in writing to the inmate and the inmate's attorney the reasons for the establishment of a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date, which differs from that otherwise required by the provisions of this section.

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

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

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

New Rule, R.1995 d.614, effective December 4, 1995.

See: 27 N.J.R. 3274(b), 27 N.J.R. 4891(a).

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

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

In (a)3i, inserted reference to a designated representative of the Commission.

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

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

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

Recodified from N.J.A.C. 10A:71-7.16B and amended by R.1999 d.252, effective August 2, 1999.

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

In (o)2, changed N.J.A.C. reference.

**10A:71-7.18 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:71-7.17, 7.17A or 7.17B.

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.

Recodified from N.J.A.C. 10A:71-7.17 and amended by R.1999 d.252, effective August 2, 1999.

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

In (b)3, changed N.J.A.C. references. Former N.J.A.C. 10A:71-7.18, Adult Diagnostic and Treatment Center examination for sex offenders, recodified to N.J.A.C. 10A:71-7.19.

**10A:71-7.18A (Reserved)**

Recodified to N.J.A.C. 10A:71-7.19A by R.1999 d.252, effective August 2, 1999.

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

**10A:71-7.19 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.