

CHAPTER 71

PAROLE

Authority

N.J.S.A. 30:4-123.48(d) and 30:4-123.51(b).

Source and Effective Date

R.2010 d.274, effective October 27, 2010.
See: 42 N.J.R. 1296(a), 42 N.J.R. 2960(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 71, Parole, expires on October 27, 2017. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 71, Parole, was adopted as R.1980 d.359, effective August 7, 1980. See: 12 N.J.R. 420(b), 12 N.J.R. 538(a).

Pursuant to Executive Order No. 66(1978), Chapter 71, Parole, 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, Parole, 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, Parole, was readopted as R.1995 d.109, effective January 27, 1995. See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).

Pursuant to Executive Order No. 66(1978), Chapter 71, Parole, was readopted as R.2000 d.50, effective January 7, 2000. See: 31 N.J.R. 3579(a), 32 N.J.R. 472(b).

Chapter 71, Parole, was readopted as R.2005 d.127, effective March 24, 2005. See: 36 N.J.R. 4407(a), 37 N.J.R. 1191(b).

Subchapter 9, Certificate Suspending Certain Employment, Occupational Disabilities or Forfeitures, was adopted as new rules by R.2009 d.32, effective January 20, 2009. See: 40 N.J.R. 5165(a), 41 N.J.R. 618(a).

Pursuant to Executive Order No. 1(2010), the chapter expiration date was extended from March 24, 2010 until the completion of the review of administrative regulations and rules by the Red Tape Review Group, and until such time as the extended regulation or rule was readopted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. See: 42 N.J.R. 1296(a).

Chapter 71, Parole, was readopted as R.2010 d.274, effective October 27, 2010. See: Source and Effective Date. See, also, section annotations.

Subchapter 2, General Administrative Provisions, was renamed Records; General Administrative Provisions by R.2012 d.033, effective February 6, 2012. See: 43 N.J.R. 2144(b), 44 N.J.R. 270(a).

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. BOARD ORGANIZATION

- 10A:71-1.1 Definitions
- 10A:71-1.2 Board meetings
- 10A:71-1.3 Parole case reviews, release hearings, board panel and board hearings
- 10A:71-1.4 Board membership
- 10A:71-1.5 Disqualification or incapacity of board members
- 10A:71-1.6 Presiding board member
- 10A:71-1.7 Delegated authority
- 10A:71-1.8 Public release of information
- 10A:71-1.9 Published information

- 10A:71-1.10 Public notice regarding proposed rulemaking
- 10A:71-1.11 Additional opportunity to be heard upon showing of sufficient public interest
- 10A:71-1.12 Petition for rulemaking
- 10A:71-1.13 Authority to relax a rule

SUBCHAPTER 2. RECORDS; GENERAL ADMINISTRATIVE PROVISIONS

- 10A:71-2.1 Definitions
- 10A:71-2.2 Records designated confidential
- 10A:71-2.3 Designation of custodian of records
- 10A:71-2.4 Requests for government records
- 10A:71-2.5 Procedures for submitting and fulfilling requests
- 10A:71-2.6 Timeliness of response
- 10A:71-2.7 Fees for copies
- 10A:71-2.8 Records retention
- 10A:71-2.9 Subpoenas
- 10A:71-2.10 Institutional infractions
- 10A:71-2.11 Institutional representatives

SUBCHAPTER 3. PAROLE RELEASE HEARINGS

- 10A:71-3.1 Definitions
- 10A:71-3.2 Calculation of parole eligibility terms
- 10A:71-3.3 Parole eligibility for young adult inmates
- 10A:71-3.4 Institutional infractions; adult inmates
- 10A:71-3.5 Parole eligibility term reductions (exceptional progress)
- 10A:71-3.6 Notice of parole eligibility; adult inmates
- 10A:71-3.7 Preparation of cases for parole hearings; adult inmates
- 10A:71-3.8 Public notice; adult inmates
- 10A:71-3.9 Inmate statements; adult inmates
- 10A:71-3.10 Purpose of parole hearing; adult inmates
- 10A:71-3.11 Factors considered at parole hearings; adult inmates
- 10A:71-3.12 In absentia hearings; adult inmates
- 10A:71-3.13 Parole hearing procedures; adult inmates
- 10A:71-3.14 Scheduling of case review and initial parole hearing; adult inmates
- 10A:71-3.15 Initial hearing and case review notice of decision; adult inmates
- 10A:71-3.16 Board member review; adult inmates
- 10A:71-3.17 Board panel hearing; scheduling for adult inmates
- 10A:71-3.18 Board panel hearing; notice of decision for adult inmates
- 10A:71-3.18A Accelerated parole eligibility dates; parole hearings —adult inmates
- 10A:71-3.19 Board hearing; scheduling for adult inmates
- 10A:71-3.20 Board hearing; notice of decision for adult inmates
- 10A:71-3.21 Board panel action; schedule of future parole eligibility dates for adult inmates
- 10A:71-3.22 Notice of tentative parole release dates; juvenile inmates
- 10A:71-3.23 Establishment of tentative parole release dates; juvenile inmates
- 10A:71-3.24 Alteration of tentative parole release dates; juvenile inmates
- 10A:71-3.25 Scheduling of quarterly reviews; juvenile inmates
- 10A:71-3.26 Factors considered at quarterly reviews; juvenile inmates
- 10A:71-3.27 Quarterly review procedures; juvenile inmates
- 10A:71-3.28 Preparation of progress reports; juvenile inmate
- 10A:71-3.29 Quarterly review notice of decision: juvenile inmates
- 10A:71-3.30 Board member review; juvenile inmates
- 10A:71-3.31 In absentia quarterly reviews; juvenile inmates
- 10A:71-3.32 Juvenile Board panel case reviews
- 10A:71-3.33 Post-incarceration supervision
- 10A:71-3.34 Calculation of parole eligibility: county inmates
- 10A:71-3.35 Notice of parole eligibility: county inmates
- 10A:71-3.36 Preparation of cases for parole hearings: county inmates

10A:71-3.37 Inmate statements; county inmates
 10A:71-3.38 Purpose of parole hearing; county inmates
 10A:71-3.39 Factors considered at parole hearings; county inmates
 10A:71-3.40 In absentia hearings; county inmates
 10A:71-3.41 Parole hearing procedures; county inmates
 10A:71-3.42 Scheduling of initial parole hearings; county inmates
 10A:71-3.43 Initial hearing notice of decision; county inmates
 10A:71-3.44 Board member review; county inmates
 10A:71-3.45 Board panel hearings; scheduling for county inmates
 10A:71-3.46 Board panel hearing; notice of decision for county inmates
 10A:71-3.47 Board panel action: denial of parole
 10A:71-3.48 Victim input
 10A:71-3.49 Informational hearing
 10A:71-3.50 Conditions for parole release
 10A:71-3.51 Waiver of time limits
 10A:71-3.52 Interstate corrections compact and serving time out-of-State (s.t.o.s.) cases
 10A:71-3.53 Medical parole
 10A:71-3.54 Mandatory supervision cases
 10A:71-3.55 Notice of parole release to prosecutor
 10A:71-3.56 Parole contract agreements; adult inmates

SUBCHAPTER 4. APPEALS

10A:71-4.1 Appeals by inmates
 10A:71-4.2 Appellate procedure
 10A:71-4.3 Review of hearing officer, Board member, Board panel or Board decisions
 10A:71-4.4 (Reserved)

SUBCHAPTER 5. SUSPENDING OR RESCINDING A PAROLE RELEASE DATE

10A:71-5.1 Suspension of a parole release date
 10A:71-5.2 Approval and acceptance of parole plan
 10A:71-5.3 Alteration of parole eligibility
 10A:71-5.4 Pre-release conditions
 10A:71-5.5 Rescinding a parole release date
 10A:71-5.6 Parole rescission hearing; scheduling
 10A:71-5.7 Parole rescission hearing; notice of hearing
 10A:71-5.8 Parole rescission hearing; notice of decision

SUBCHAPTER 6. SUPERVISION

10A:71-6.1 Administration
 10A:71-6.2 Supervisory procedures
 10A:71-6.3 Certificate of parole
 10A:71-6.4 Conditions of parole
 10A:71-6.5 Restitution
 10A:71-6.6 Modification of conditions
 10A:71-6.7 Adjustment hearings; State prison parolees
 10A:71-6.8 Forfeiture of commutation time credits
 10A:71-6.9 Discharge from parole
 10A:71-6.10 Transfer of parole supervision to out-of-State jurisdiction
 10A:71-6.11 Community supervision for life
 10A:71-6.12 Parole supervision for life
 10A:71-6.13 Polygraph examinations

SUBCHAPTER 7. REVOCATION OF PAROLE

10A:71-7.1 Commencement of revocation proceedings
 10A:71-7.2 Issuance of warrants
 10A:71-7.3 Motion for accelerated revocation
 10A:71-7.4 Preliminary hearing
 10A:71-7.5 Preliminary hearing; scheduling
 10A:71-7.6 Designation of preliminary hearing officers
 10A:71-7.7 Preliminary hearing; notice of hearing
 10A:71-7.8 Preliminary hearing; determination of probable cause
 10A:71-7.9 Status of parolee pending parole revocation hearing
 10A:71-7.10 Preliminary hearing; notice of decision
 10A:71-7.11 Board panel action pending revocation hearing
 10A:71-7.12 Parole revocation hearing

10A:71-7.13 Revocation hearing; scheduling
 10A:71-7.14 Revocation hearing; notice of hearing
 10A:71-7.15 Status of parolee pending Board panel action
 10A:71-7.16 Record of the revocation hearing
 10A:71-7.16A through 10A:71-7.16B (Reserved)
 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
 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
 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
 10A:71-7.18 Revocation hearing; notice of decision
 10A:71-7.18A (Reserved)
 10A:71-7.19 Adult Diagnostic and Treatment Center examination for sex offenders
 10A:71-7.19A Adult Diagnostic and Treatment Center examination for sex offenders; place of confinement; future parole eligibility
 10A:71-7.20 Withdrawal of parole warrants
 10A:71-7.21 Revenue cases

SUBCHAPTER 8. CERTIFICATE OF GOOD CONDUCT

10A:71-8.1 Definition
 10A:71-8.2 Eligibility
 10A:71-8.3 Procedure
 10A:71-8.4 Criteria
 10A:71-8.5 Notification
 10A:71-8.6 Revocation of Certificate of Good Conduct
 10A:71-8.7 Board action

SUBCHAPTER 9. CERTIFICATE SUSPENDING CERTAIN EMPLOYMENT, OCCUPATIONAL DISABILITIES OR FORFEITURES

10A:71-9.1 Authorization to issue certificate
 10A:71-9.2 Definitions
 10A:71-9.3 Eligibility
 10A:71-9.4 Presumption of rehabilitation
 10A:71-9.5 Procedure
 10A:71-9.6 Notification
 10A:71-9.7 Revocation of certificate
 10A:71-9.8 Board action

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 administrator, 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.

an opportunity for input reasonably prior to any formal action by the New Jersey State Parole Board or its Chairperson.

“Consulting with” shall mean providing adequate notice, such as but not limited to an agenda, of proposed action, and

“Custodian” or “custodian of records” shall mean the employee of the Board designated by the Chairperson to administer the provisions of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

“Fee” shall mean any amount due including the cost of copies of government records, special service charge, service charge and postage.

“Government record” or “record” shall mean any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of the Board’s official business by any employee or member of the Board, or that has been received in the course of the Board’s official business by any employee or member of the Board. The terms shall not include inter-agency or intra-agency advisory, consultative or deliberative material.

“Medium” shall mean the generic form in which a government record is maintained; that is, paper, computerized form or microfilm. With respect to records in computerized form, the medium is related to the type of device on which the record is stored, for example, diskette, hard-drive, storage tape, etc.

“Special charge” shall mean a charge to the requester in addition to the cost of duplicating records that are converted from one medium to another that is reasonable and based on the cost for any extensive use of information technology, or for the labor cost of personnel providing the service that is actually incurred by the Board or attributable to the Board for the programming, clerical and supervisory assistance required, or both.

“Special service charge” shall mean a charge to a requester that is reasonable and based upon the actual direct cost of providing the copy or copies of records, or access to inspect or examine records.

New Rule, R.2012 d.033, effective February 6, 2012.

See: 43 N.J.R. 2144(b), 44 N.J.R. 270(a).

Former N.J.A.C. 10A:71-2.1, Confidentiality of information and records, was recodified to N.J.A.C. 10A:71-2.2.

10A:71-2.2 Records designated confidential

(a) In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 et seq., any other law, rule promulgated under the authority of any statute or Executive Order of the Governor, resolution of both houses of the Legislature, Executive Order of the Governor, Rules of Court or any Federal law, Federal regulation or Federal order, the following records shall be deemed confidential and shall not be subject to public access:

1. Information, files, documents, reports, records or other written materials concerning an offender’s medical, psychiatric or psychological history, diagnosis, treatment or evaluation;

2. Information, files, documents, reports, records or other written materials concerning an offender’s alcohol, drug or other substance abuse evaluation, history and/or treatment;

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

4. Investigative reports or information, including those from informants that, if disclosed, would impede ongoing investigations, create a risk of reprisal, or interfere with the security or orderly operation of an institution or a community program;

5. Investigative reports or information compiled or intended for law enforcement purposes that, 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 that, if disclosed, would impede Board functions by discouraging persons from providing information to the Board;

7. An electronic recording or a transcript, if prepared, of any proceeding of the Board;

8. 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

9. A record that consists of information, statement or testimony in written, audio or video form provided by a victim or, if the victim is deceased, the nearest relative of the victim. This shall include, but not be limited to, any information obtained pursuant to N.J.A.C. 10A:71-3.48, Victim registration, the continuing notice and the extent of any physical harm or psychological or emotional harm or trauma suffered by the victim, the extent of any loss of earnings or ability to work suffered by the victim, the continuing effect of the crime upon the victim’s family, personal information pertaining to the victim or victim’s family such as the victim’s home address, home telephone number, work or school address, work telephone number, social security account number, medical history or any other identifying information unless the requested information, statement or testimony in written, audio or video form was given at a public proceeding.

- (b) 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.

(c) 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.

(d) 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.

Recodified from N.J.A.C. 10A:71-2.1 and amended by R.2012 d.033, effective February 6, 2012.

See: 43 N.J.R. 2144(b), 44 N.J.R. 270(a).

Section was "Confidentiality of information and records". Rewrote (a); deleted former (b); and recodified former (c) through (e) as (b) through (d). Former N.J.A.C. 10A:71-2.2, Records retention, was recodified to N.J.A.C. 10A:71-2.8.

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:71-2.3 Designation of custodian of records

(a) The Chairperson shall designate a custodian of records for the Board, who shall be responsible for accepting and processing requests for access to government records of the Board.

(b) The address and other contact information for the custodian of records shall be posted on the Board's website,

www.state.nj.us/parole, and otherwise made available to the public. The contact information is as follows:

Title: Custodian of Records
State Parole Board
Street Address: 171 Jersey Street, Building #2
Trenton, New Jersey 08611
Mailing Address: PO Box 862
Trenton, New Jersey 08625-0862

New Rule, R.2012 d.033, effective February 6, 2012.

See: 43 N.J.R. 2144(b), 44 N.J.R. 270(a).

Former N.J.A.C. 10A:71-2.3, Subpoenas, was recodified to N.J.A.C. 10A:71-2.9.

10A:71-2.4 Requests for government records

(a) All requests for access to government records of the Board pursuant to N.J.S.A. 47:1A-1 et seq. shall be in writing on a form that meets the requirements of N.J.S.A. 47:1A-5(f) and is adopted by the custodian of records.

(b) The requester shall be requested to provide the following information on the form:

1. The name, address and telephone number of the requester;
2. A description of the government record sought, method of access and if copies are sought, the medium requested and mode of delivery; and
3. The signature of the requester and the date submitted to the custodian of records.

(c) Copies of the request form shall be available at the office of the custodian of records, all district parole offices and on the Board's website.

(d) An anonymous request may be submitted; however, if information necessary to the fulfillment of the request is not provided, the request shall not be considered a valid request until the requester provides such information.

New Rule, R.2012 d.033, effective February 6, 2012.

See: 43 N.J.R. 2144(b), 44 N.J.R. 270(a).

Former N.J.A.C. 10A:71-2.4, Institutional infractions, was recodified to N.J.A.C. 10A:71-2.10.

10A:71-2.5 Procedures for submitting and fulfilling requests

(a) Request forms may be hand-delivered during normal business hours of the Board, mailed or transmitted electronically by the requester to the custodian of records.

(b) Any member or employee of the Board who receives a request for access to a government record shall direct the requester to submit the request to the custodian of records.

(c) Upon receipt of a request form, the custodian of records shall review the request form for clarity and completeness. If the request form is unclear as to the government record requested, the custodian shall advise the requester of

the deficiency, provided contact information is included on the form. The custodian may require the requester to provide additional information to identify the record or to ascertain the requester's identity and status to determine whether access is authorized. The custodian may deny a request for access if the request is unclear or incomplete after attempting to reach a reasonable resolution with the requester.

(d) Upon receipt of a request form, the custodian of records shall estimate the fee of providing the records.

(e) The custodian of records may impose a special charge to fulfill a request that requires the conversion of a government record to a medium not routinely used by the Board, not routinely developed or maintained by the Board or that requires a substantial amount of manipulation or programming of information technology.

(f) The custodian of records may impose a special service charge to fulfill an extraordinary request to inspect or examine records.

(g) When responding to the request, the custodian of records shall sign and date the request form, enter the estimated fee and, if applicable, tracking number and provide the requester with a copy. If access to a record is denied, the custodian shall explain in writing the reason for the denial on the form or an attachment.

(h) The custodian of records shall notify the requester when the records are available.

(i) The custodian of records shall collect any fee due to prior to delivery of the copies of records. Payment shall be made by cash, check or money order payable to the State of New Jersey. When payment is made by cash, the exact amount shall be required.

New Rule, R.2012 d.033, effective February 6, 2012.

See: 43 N.J.R. 2144(b), 44 N.J.R. 270(a).

Former N.J.A.C. 10A:71-2.5. Institutional representatives, was recodified to N.J.A.C. 10A:71-2.11.

10A:71-2.6 Timeliness of response

(a) The custodian of records shall grant or deny access within seven business days after receiving a request completed in accordance with N.J.A.C. 10A:71-2.4 or such additional time as may be authorized by law or this subchapter or as may be agreed to by the requester.

(b) If the record is in storage or archived, the requester shall be so advised within seven business days after the custodian of records receives the request. The requester shall also be advised by the custodian when the record can be made available.

(c) The calculation of business days shall begin on the first business day following receipt of the completed request by the custodian and shall end at the close of business on the seventh business day.

(d) The failure to respond to a request in a timely manner shall be deemed a denial of the request.

New Rule, R.2012 d.033, effective February 6, 2012.

See: 43 N.J.R. 2144(b), 44 N.J.R. 270(a).

10A:71-2.7 Fees for copies

(a) The costs for providing a government record shall be that set forth in N.J.S.A. 47:1A-1 et seq.

(b) Unless a special charge is required to fulfill a request for records that are maintained electronically, only the cost of the medium used by the Board to reproduce records shall be charged. Access to electronic records and non-printed material shall be provided free of charge.

(c) Whenever charges are imposed for a special service charge, a special charge or medium pursuant to (b) above, the requester shall be given the opportunity to review and object to the charge prior to it being incurred. If the requester objects to the charge and refuses to withdraw the request, the custodian of records may deny the request after attempting to reach a reasonable solution that accommodates the interests of the requester and the Board.

New Rule, R.2012 d.033, effective February 6, 2012.

See: 43 N.J.R. 2144(b), 44 N.J.R. 270(a).

10A:71-2.8 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,".

Recodified from N.J.A.C. 10A:71-2.2 by R.2012 d.033, effective February 6, 2012.

See: 43 N.J.R. 2144(b), 44 N.J.R. 270(a).

10A:71-2.9 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.

Recodified from N.J.A.C. 10A:71-2.3 by R.2012 d.033, effective February 6, 2012.

See: 43 N.J.R. 2144(b), 44 N.J.R. 270(a).

10A:71-2.10 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 that has resulted in a finding of not guilty by the appropriate Department or Commission officials, provided that the finding of not guilty is rendered based on a substantive finding and not due to a procedural deficiency in the disciplinary process.

(c) When the basis for the rescission hearing or the alteration of the parole eligibility date is an institutional infraction that has resulted in a finding of guilt by the appropriate Department or Commission officials, 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.
Petition for Rulemaking.
See: 33 N.J.R. 4034(b).
Petition for Rulemaking.
See: 34 N.J.R. 608(b).

Amended by R.2010 d.274, effective December 6, 2010.
See: 42 N.J.R. 1296(a), 42 N.J.R. 2960(a).

In (b), substituted the first occurrence of “that” for “which” and inserted “, provided that the finding of not guilty is rendered based on a substantive finding and not due to a procedural deficiency in the disciplinary process”; and in (c), inserted “that has resulted in a finding of guilt by the appropriate Department or Commission officials”.
Recodified from N.J.A.C. 10A:71-2.4 by R.2012 d.033, effective February 6, 2012.
See: 43 N.J.R. 2144(b), 44 N.J.R. 270(a).

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:71-2.11 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.

Recodified from N.J.A.C. 10A:71-2.5 by R.2012 d.033, effective February 6, 2012.
See: 43 N.J.R. 2144(b), 44 N.J.R. 270(a).

SUBCHAPTER 3. PAROLE RELEASE HEARINGS

10A:71-3.1 Definitions

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

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

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

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

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

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

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

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 pursuant to N.J.A.C. 10A:71-2.2.

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), (e) and (i), 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).
Amended by R.2000 d.50, effective February 7, 2000.
See: 31 N.J.R. 3579(a), 32 N.J.R. 472(b).

In (o), changed N.J.A.C. reference.
Amended by R.2002 d.175, effective June 3, 2002.
See: 34 N.J.R. 359(a), 34 N.J.R. 1918(b).
Amended by R.2012 d.033, effective February 6, 2012.
See: 43 N.J.R. 2144(b), 44 N.J.R. 270(a).

In (n)iv, inserted a comma following "parolee", deleted "by the Board" following "confidential", and updated the N.J.A.C. reference.

10A:71-3.54 Mandatory supervision 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 enumerated in subsection (d) of N.J.S.A. 2C:43-7.2 shall fix a minimum term of 85 percent of the sentence during which the offender shall not be eligible for parole.

(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 com-

mence 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 Division 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 directly or through a third party by any means including, but not limited to, verbal, physical, written, or electronic, with the victim(s) of the offense or the victim's relatives, unless contact is authorized by a Board panel or contact is authorized by the appropriate court;

ii. Refrain from any contact directly or through a third party by any means including, but not limited to, verbal, physical, written, or electronic, with a co-defendant involved in the commission of the offense, unless contact is authorized by the District Parole Supervisor or designated representative or contact is authorized by the appropriate court.

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 Board.

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 Board 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(i).

(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 by the appropriate Board panel and the offender returned to custody for violation of a condition of supervision the Board panel shall determine:

1. Whether 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;

2. Whether the offender shall be required, except as provided in (i)3 below, to serve a term established pursuant to N.J.A.C. 10A:71-7.17B prior to being eligible for parole consideration; or

3. Whether the offender, if originally sentenced pursuant to N.J.S.A. 2C:47-1 et seq. and eligibility for parole consideration required the recommendation of the Special Classification Review Board, shall be eligible for parole consideration pursuant to the provisions of N.J.A.C. 10A:71-7.19 or 7.19A, as appropriate.

(j) If the Board panel determines pursuant to (i)1 above that 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, the Board panel shall state in writing to the inmate the reasons therefor.

(k) A term established pursuant to (i) above shall not be reduced by commutation credit for good behavior or credits for diligent application of work and other institutional assignments.

(l) The term established pursuant to (i) above shall not be aggregated with the parole eligibility term derived from a term of imprisonment imposed on the offender for the commission of any other offense.

(m) 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.

(n) 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 (i) 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.

(o) 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 or parole 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:7-6.4(a) and (i) and (e)2 above, the conditions as specified in N.J.A.C. 10A:71-6.11(b), (c), (e), (f) and (g) or 6.12(d), (e), (g), (h) and (i), 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).

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

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

In (g), (k) and (l), changed N.J.A.C. references.

Amended by R.2002 d.175, effective June 3, 2002.

See: 34 N.J.R. 359(a), 34 N.J.R. 1918(b).

Rewrote (a); in (e)4, deleted "the Bureau of Parole or" following "representative of" and "as appropriate" following "Board"; in (f), deleted "Bureau of Parole or" following "representative of the" and "as appropriate," following "Board".

Amended by R.2005 d.127, effective April 18, 2005.

See: 36 N.J.R. 4407(a), 37 N.J.R. 1191(b).

In (l), inserted "or parole supervision for life" following "community supervision for life" and amended the N.J.A.C. reference.

Amended by R.2007 d.212, effective July 2, 2007.

See: 39 N.J.R. 751(a), 39 N.J.R. 2538(b).

Rewrote (i), added new (j) through (l); and recodified former (j) through (l) as (m) through (o).

Amended by R.2010 d.274, effective December 6, 2010.

See: 42 N.J.R. 1296(a), 42 N.J.R. 2960(a).

In (o), inserted the first occurrence of "pursuant".

Amended by R.2014 d.013, effective January 6, 2014.

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

Section was "Rules of supervision for mandatory release cases". In the introductory paragraph of (e), inserted a comma following "certificate", and rewrote (e)2i and (e)2ii.

10A:71-3.55 Notice of parole release to prosecutor

(a) The Board, in cases involving the release of an adult inmate on parole, shall provide written notice to the prosecutor of the anticipated parole release of the inmate from incarceration in a county or State penal institution or the Adult Diagnostic and Treatment Center.

(b) If available, the notice shall be provided to the prosecutor 90 days before the inmate's anticipated release; provided, however, the notice shall be provided at least 30 days before release. The notice shall include the person's name, identifying factors, offense history and anticipated future residence.

(c) As used in this section, "prosecutor" means the county prosecutor of the county in which the inmate was convicted unless the matter was prosecuted by the Attorney General, in which case "prosecutor" means the Attorney General.

New Rule, R.2002 d.175, effective June 3, 2002.

See: 34 N.J.R. 359(a), 34 N.J.R. 1918(b).

10A:71-3.56 Parole contract agreements; adult inmates

(a) Pursuant to N.J.S.A. 30:4-123.67, the appropriate Board panel and the Department shall enter into formal parole contract agreements with individual inmates reduced to writing and signed by all parties. A parole contract agreement shall stipulate individual programs of education, training, or other activity that shall result in a specified reduction of the inmate's primary parole eligibility date upon such successful completion of the program.

(b) A formal parole contract agreement required under this section shall be entered into within two months of an inmate's admission to a State correctional facility.

(c) An inmate eligible to enter into a parole contract agreement may decline to enter into a parole contract agreement. If an inmate initially declines to enter into a parole contract agreement, the inmate may not at a later date request to enter into a parole contract agreement.

(d) In order to be eligible to enter a parole contract agreement, an inmate must be sentenced on or after August 1, 2010, and must meet the following criteria:

1. The calculation of the inmate's primary parole eligibility date is not based on the service of a judicially or statutorily mandated minimum term imposed as a component of sentence or on the service of a full nine months of sentence or aggregate sentence;

2. The inmate is not serving a period of confinement imposed upon revocation of parole pursuant to N.J.S.A. 30:4-123.63 for violation of the conditions of parole granted pursuant to N.J.S.A. 30:4-123.55, the conditions of mandatory parole supervision imposed pursuant to N.J.S.A. 2C:43-7.2, or the conditions of a special sentence of parole supervision for life imposed pursuant to N.J.S.A. 2C:43-6.4;

3. The inmate is not past his or her primary parole eligibility date at the time of the inmate's admission to a State correctional facility;

4. The inmate is not serving a sentence imposed pursuant to N.J.S.A. 2C:43-7.2; and

5. The inmate is not serving a sentence imposed on the offense 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), endangering the welfare of a child pursuant to N.J.S.A. 2C:24-4(b)4, luring, or an attempt to commit any of these offenses.

(e) The parole contract agreement shall be reduced to writing and shall specify the terms of the agreement. The terms of the parole contract agreement shall be deemed to be non-negotiable.

(f) The parole contract agreement shall become effective upon the inmate signing the parole contract agreement. The inmate shall be provided with a copy of the signed parole contract agreement. The parole contract agreement shall expire when the primary parole eligibility date has been reached, unless the parole contract agreement is terminated by the Board prior to the primary parole eligibility date.

(g) Pursuant to the schedule of reductions, which shall be a component of the parole contract agreement, the inmate's

primary parole eligibility date will be reduced by the appropriate number of days, as indicated in the schedule of reductions, upon the inmate's completion of the specified program(s). The grant of the appropriate reduction shall be subject to the provisions of (j) below. An authorized reduction shall not be applied to reduce any judicially or statutorily mandated minimum term or any other statutory parole eligibility restriction. An authorized reduction shall not result in a primary parole eligibility date being established earlier than the expiration date of a judicially or statutorily mandated minimum term or any other statutory parole eligibility restriction.

(h) Pursuant to N.J.S.A. 30:4-123.67(c), the Board shall monitor an inmate's compliance with the parole contract agreement at least once every 12 months.

(i) Upon a determination being rendered by a Board panel that the inmate has successfully completed the specified program(s), the sentencing court shall be provided with written notification that the inmate has successfully completed the specified program(s). Further, the Board shall inquire whether the sentencing court consents to the reduction of the primary parole eligibility date by the number of days as specified in the parole contract agreement.

(j) The specified reduction(s) in the parole contract agreement shall be granted upon compliance with all of the following conditions:

1. The inmate has successfully completed the specified program(s). No reduction shall be granted for the completion of any program that is not specified in the parole contract agreement;

2. The Department must verify that the inmate has successfully completed the specified program(s);

3. The inmate must not have been adjudicated guilty of the commission of any disciplinary infraction pursuant to N.J.A.C. 10A:4-9.1; and

4. Pursuant to N.J.S.A. 30:4-123.52.b and 30:4-123.67.a, the sentencing court must consent to any reduction in the primary parole eligibility date.

(k) Upon a determination being rendered by a Board panel that the provisions of (j) above have been met, the primary parole eligibility date shall be reduced by the number of days as specified in the parole contract agreement.

(l) The inmate shall be notified in writing whether the primary parole eligibility date will or will not be reduced by the number of days specified in the parole contract agreement. If the primary parole eligibility date is not to be reduced by the number of days specified in the parole contract agreement, the inmate shall be advised of the reason(s) for such determination.

(m) The Board may terminate a parole contract agreement based on the following:

1. The inmate has been adjudicated guilty of any disciplinary infraction pursuant to N.J.A.C. 10A:4-9.1; or

2. The inmate refused to participate in, or failed to successfully complete, any specified program.

(n) If a parole contract agreement is terminated, the Board shall notify the inmate in writing of the determination to terminate the parole contract agreement and the reasons therefor.

(o) If a parole contract agreement is terminated, the inmate shall not be eligible to receive any reduction in the primary parole eligibility date for any program completed during the 12-month monitoring period.

(p) A determination to terminate a parole contract agreement may be appealed by the inmate to the Board. The appeal shall be filed in writing within 90 days of written notice of the determination being received by the inmate. The appeal shall contain the reason(s) for the appeal.

(q) The Commissioner has the authority to transfer an inmate to any facility for the proper and secure incarceration of the inmate. The terms of the parole contract agreement shall not be deemed to restrict the authority of the Commissioner to transfer an inmate to any facility for the proper and secure incarceration of the inmate. Nor shall the terms of the parole contract agreement be deemed to require that the Department provide uniform programming at each correctional facility in order to assist an inmate's participation in or completion of specific programs after the inmate having been transferred from a correctional facility to another correctional facility.

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

SUBCHAPTER 4. APPEALS

10A:71-4.1 Appeals by inmates

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

1. The Board panel failed to consider material facts.

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

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

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

ii. There is a reasonable expectation that the inmate will violate conditions of parole established pursuant to N.J.A.C. 10A:71-6.4(a) if released on parole.

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

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

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

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

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

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

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

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

(c) Any conditions of parole or pre-parole requirements established by a Board member or a Board panel or affirmed by a Board panel pursuant to N.J.A.C. 10A:71-6.6 shall be appealable to the appropriate Board panel or the Board, respectively, provided one of the following criteria is met:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) The specific application of Board schedules pursuant to N.J.A.C. 10A:71-3.3, 3.4, 3.21, 3.23, 3.24, 7.17, 7.17A or 7.17B shall be appealable to the Board or the appropriate Board panel, provided one of the following criteria is met:

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

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

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

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

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

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

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

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

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

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

(h) A decision not to refer a parolee's case for an assessment as to whether the parolee is indigent and whether an attorney shall be assigned pursuant to the pro bono assignment program to represent the parolee at a preliminary hearing or parole revocation hearing conducted pursuant to N.J.A.C. 10A:71-7.7 and 7.14, respectively, shall be appealable to the Board.

(i) A failure to provide a Board panel hearing by an inmate's actual parole eligibility date as set by the Board shall be appealable to the Chairperson.

(j) Any denial of parole by the Board shall be appealable to the Board provided one of the criteria in (a) above is met.

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

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

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

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

Added (i).

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

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

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

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

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

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

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

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

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

In (f), inserted additional N.J.A.C. reference.

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

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

In (a), added "In the case of an inmate serving a sentence for an offense committed prior to August 19, 1997," at the beginning of 2, inserted a new 3, and recodified former 3 through 5 as 4 through 6.

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

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

In (f), changed N.J.A.C. references in the introductory paragraph.

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

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

Added (i).

Petition for Rulemaking.

See: 39 N.J.R. 262(b), 804(c).

Recodified from N.J.A.C. 10A:71-4.2 and amended by R.2008 d.168, effective June 16, 2008.

See: 39 N.J.R. 5049(a), 40 N.J.R. 3726(b).

In (h), substituted "pursuant to the pro bono assignment program" for "from the list maintained in accordance with R.3:27-2" and inserted commas following "7.14" and "respectively"; in (i), substituted "Chairperson" for "Chairman"; and added (j).

Former N.J.A.C. 10A:71-4.1, Requests by inmates for reconsideration, was repealed.

Amended by R.2010 d.274, effective December 6, 2010.

See: 42 N.J.R. 1296(a), 42 N.J.R. 2960(a).

In the introductory paragraph of (c), inserted "or affirmed by a Board panel pursuant to N.J.A.C. 10A:71-6.6"; and in (d)1, inserted "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;"

Case Notes

Death of victim was not appropriate basis to deny parole to prisoner convicted of reckless manslaughter. *New Jersey State Parole Bd. v. Cestari*, 224 N.J.Super. 534, 540 A.2d 1334 (A.D.1988), certification denied 111 N.J. 649, 546 A.2d 558.

Parole Board could not rely on "gut" reaction to justify denial of parole. *New Jersey State Parole Bd. v. Cestari*, 224 N.J.Super. 534, 540 A.2d 1334 (A.D.1988), certification denied 111 N.J. 649, 546 A.2d 558.

Parole Board panel decision was final determination of board for purposes of review. *New Jersey State Parole Bd. v. Cestari*, 224 N.J.Super. 534, 540 A.2d 1334 (A.D.1988), certification denied 111 N.J. 649, 546 A.2d 558.

For parole board's finding of substantial likelihood as to whether inmate will commit another crime if paroled to be sustained, finding must be supported by credible evidence in whole record. *New Jersey State Parole Bd. v. Cestari*, 224 N.J.Super. 534, 540 A.2d 1334 (A.D.1988), certification denied 111 N.J. 649, 546 A.2d 558.

Absent sufficient evidence that there was substantial likelihood that inmate will commit another offense after parole, denial of parole is arbitrary and capricious. *New Jersey State Parole Bd. v. Cestari*, 224 N.J.Super. 534, 540 A.2d 1334 (A.D.1988), certification denied 111 N.J. 649, 546 A.2d 558.

Review of denial of parole by board based on arbitrary and capricious standard. *New Jersey State Parole Bd. v. Cestari*, 224 N.J.Super. 534, 540 A.2d 1334 (A.D.1988), certification denied 111 N.J. 649, 546 A.2d 558.

10A:71-4.2 Appellate procedure

(a) All appeals submitted pursuant to N.J.A.C. 10A:71-4.1 shall be filed in writing and within 90 days of written notice action or decision being received by the inmate and shall contain the reasons for the appeal and the criteria under which the appeal is submitted. An appeal submitted pursuant to N.J.A.C. 10A:71-4.1(i) (failure to provide timely Board panel hearing) shall include reference to the inmate's actual parole eligibility date as established by the Board's staff.

(b) Appeals filed by inmates shall be considered by the Board panel, Board or Chairperson, as appropriate, within 90 days of the date the appeal was received.

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

(d) An appeal filed by an inmate pursuant to N.J.A.C. 10A:71-4.1(i) (failure to provide timely Board panel hearing) shall be considered by the Chairperson and a written notification of the Chairperson's decision provided to the inmate within 45 days of the date of the appeal being received.

(e) In the case of an appeal filed by an inmate pursuant to N.J.A.C. 10A:71-4.1(i) (failure to provide timely Board panel hearing), the failure of the Chairperson to provide written notification of a decision within 45 days of the date the appeal was received shall be deemed a denial of the appeal. A denial shall constitute a final agency decision.

(f) The Board panel, Board or Chairperson, as appropriate, may affirm, modify or reverse the decision being appealed, or

may remand the case to the Board's staff, hearing officer, Board member or Board panel for further consideration.

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

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

Added "chairperson".

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

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

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

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

In (a), added the second sentence; added a new (d) and (e), and recodified former (d) as (f).

Petition for Rulemaking.

See: 39 N.J.R. 262(b), 804(c).

Recodified from N.J.A.C. 10A:71-4.3 and amended by R.2008 d.168, effective June 16, 2008.

See: 39 N.J.R. 5049(a), 40 N.J.R. 3726(b).

In (a), (d) and (e), substituted "N.J.A.C. 10A:71-4.1(i) (failure to provide timely Board panel hearing)" for "N.J.A.C. 10A:71-4.2(i)"; in (a), deleted "and 4.2" following the first occurrence of "4.1"; in (b), substituted "90" for "45"; in (d) and (e), substituted "Chairperson" for "Chairman"; and in (d), substituted "Chairperson's" for "Chairman's".

Former N.J.A.C. 10A:71-4.2, Appeals by inmates, recodified to N.J.A.C. 10A:71-4.1.

Amended by R.2010 d.274, effective December 6, 2010.

See: 42 N.J.R. 1296(a), 42 N.J.R. 2960(a).

In (a), substituted "90" for "180".

10A:71-4.3 Review of hearing officer, Board member, Board panel or Board decisions

(a) A Board member, Board panel or the Board may, upon determining that good cause exists, reconsider any decision to grant, deny or revoke parole.

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

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

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

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

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

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

(2) There is a reasonable expectation that the inmate will violate conditions of parole established pursuant to N.J.A.C. 10A:71-6.4(a) if released on parole.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Recodified from N.J.A.C. 10A:71-4.4 and amended by R.2008 d.168, effective June 16, 2008.

See: 39 N.J.R. 5049(a), 40 N.J.R. 3726(b).

Section was "Review of hearing officer, Board member or Board panel decisions". In (a), inserted "Board member," "or the Board" and "exists" and substituted "determining that" for "its own motion for".

Former N.J.A.C. 10A:71-4.3, Appellate procedure, recodified to N.J.A.C. 10A:71-4.2.

10A:71-4.4 (Reserved)

Recodified to N.J.A.C. 10A:71-4.3 by R.2008 d.168, effective June 16, 2008.

See: 39 N.J.R. 5049(a), 40 N.J.R. 3726(b).

Section was "Review of hearing officer, Board member or Board panel decisions".

SUBCHAPTER 5. SUSPENDING OR RESCINDING A PAROLE RELEASE DATE

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

(a) The Board, the appropriate Board panel, the Chairperson or a designated representative may suspend a parole release date in accordance with the provisions of this subchapter. Any suspension of a parole release date shall act to prohibit the release of the inmate by the Department or Commission on the original parole release date unless such suspension is subsequently vacated.

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

(c) If such suspension is subsequently vacated, the inmate, the chief executive officer of the institution of incarceration and the Division of Parole shall be immediately notified in writing and the inmate shall be released on the original parole release date or as soon thereafter as is practicable.

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

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

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

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

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

In (a), inserted reference to Commission.

Amended by R.2002 d.175, effective June 3, 2002.

See: 34 N.J.R. 359(a), 34 N.J.R. 1918(b).

Amended by R.2010 d.274, effective December 6, 2010.

See: 42 N.J.R. 1296(a), 42 N.J.R. 2960(a).

In (a), inserted the first sentence, and deleted "by the Chairperson or a designated representative" following the first occurrence of "suspension".

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

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

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

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

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

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

(b) and (c) substantially amended.

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

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

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

Amended by R.2002 d.175, effective June 3, 2002.

See: 34 N.J.R. 359(a), 34 N.J.R. 1918(b).

In (b), deleted ", Bureau of Parole".

10A:71-5.3 Alteration of parole eligibility

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

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

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

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

Section substantially amended.

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

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

10A:71-5.4 Pre-release conditions

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

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

Amended by R.2010 d.274, effective December 6, 2010.
See: 42 N.J.R. 1296(a), 42 N.J.R. 2960(a).
In (b), inserted "Board or the".

10A:71-5.5 Rescinding a parole release date

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

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

Amended by R.2010 d.274, effective December 6, 2010.
See: 42 N.J.R. 1296(a), 42 N.J.R. 2960(a).

In (a), inserted "Board or the" following "The", "Board or the appropriate" following "attention of the" and inserted a comma following the second occurrence of "panel"; and in (b), inserted "Board or the appropriate", and inserted a comma following "considered", "including" and "limited to".

Case Notes

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

10A:71-5.6 Parole rescission hearing; scheduling

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

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

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

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

(e) A rescission hearing may be conducted by videoconferencing. A record of the hearing shall be made pursuant to N.J.A.C. 10A:71-5.8(a).

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

Subsections (c) and (d) added.

Amended by R.2010 d.274, effective December 6, 2010.
See: 42 N.J.R. 1296(a), 42 N.J.R. 2960(a).

Rewrote (a); in (b), substituted "that" for "which" and inserted "Board or the appropriate"; in (d), inserted "Board, the appropriate Board panel or the" and deleted "or Board panel" from the end of the first sentence; and added (e).

Case Notes

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

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

(a) Upon the initiation of the rescission hearing process, the inmate shall be provided with written notification of the reasons for the hearing, the purpose of the hearing and the information and material to be considered at the hearing, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.2 or the rules of the Department or Commission.

(b) Such notification shall inform the inmate of the following rights to which he or she shall be entitled at the rescission hearing:

1. The right to appear and speak in his or her own behalf and to be aided by an interpreter if such aid is determined to be necessary by the hearing officer.
2. The right to remain silent.
3. The right to present witnesses to testify in his or her behalf as to matters relevant to the hearing in accordance with N.J.A.C. 10A:71-2.10.
4. The right to present documentary evidence and any other relevant material or information to the hearing officer.
5. The right to confront and cross-examine adverse witnesses upon request, unless the hearing officer determines that such witnesses would be subjected to risk of harm.
6. The right to waive such hearing.
7. The right to disclosure of adverse information except as provided in N.J.A.C. 10A:71-2.2 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)iii, any and all statements or testimony of the victim or nearest relative of a murder/manslaughter 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 con-

fidential pursuant to N.J.A.C. 10A:71-2.2. Further, confrontation and cross-examination of the person providing statements and 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).

Amended by R.2010 d.274, effective December 6, 2010.

See: 42 N.J.R. 1296(a), 42 N.J.R. 2960(a).

In (a), deleted "the Board panel shall provide" preceding and inserted "shall be provided" following "the inmate", and deleted "and regulations" following "rules".

Amended by R.2012 d.033, effective February 6, 2012.

See: 43 N.J.R. 2144(b), 44 N.J.R. 270(a).

In (a), (b)3 and (b)7, updated the N.J.A.C. reference; and in (c), substituted "pursuant to N.J.A.C. 10A:71-2.2" for "and shall not be released to the inmate".

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, 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 Board or 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 or Board panel within 14 days after the receipt of the hearing summary. The provisions of

N.J.A.C. 10A:71-2.2 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 or Board panel shall render a final decision as to rescission of parole.

3. The Board 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 or 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 or 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".

Amended by R.2010 d.274, effective December 6, 2010.

See: 42 N.J.R. 1296(a), 42 N.J.R. 2960(a).

In (a), inserted "Board,"; in (b)1, (b)2, (c) and (d), inserted "Board or"; and in (b)3, deleted "panel" following "Board".

Amended by R.2012 d.033, effective February 6, 2012.

See: 43 N.J.R. 2144(b), 44 N.J.R. 270(a).

In (b)1, updated the N.J.A.C. reference.

SUBCHAPTER 6. SUPERVISION

10A:71-6.1 Administration

(a) Except as otherwise provided pursuant to the Interstate Compact for Adult Offender Supervision (N.J.S.A. 2A:168-26 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. §§3521 et seq.), all adult and juvenile parolees released from an adult correctional facility shall at all times be under the supervision of the Division of Parole and juvenile parolees released from a juvenile correctional facility shall at all times be under the supervision of the Commission in accordance with the policies and rules of the Board.

(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).

Amended by R.2002 d.175, effective June 3, 2002.

See: 34 N.J.R. 359(a), 34 N.J.R. 1918(b).

In (a), added "in accordance with the policies and rules of the Board" after "Commission".

Amended by R.2005 d.127, effective April 18, 2005.

See: 36 N.J.R. 4407(a), 37 N.J.R. 1191(b).

Rewrote (a).

Amended by R.2010 d.274, effective December 6, 2010.

See: 42 N.J.R. 1296(a), 42 N.J.R. 2960(a).

In (a), substituted "§§3521" for "§§ 3251".

10A:71-6.2 Supervisory procedures

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

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

10A:71-6.3 Certificate of parole

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

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

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

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

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

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

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

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

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

Deleted text "the Chief of the Bureau of Interstate Services".

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

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

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

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

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

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

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

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

In (c), substituted a reference to the Director of Parole for a reference to the Chief of the Bureau of Parole.

Case Notes

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

10A:71-6.4 Conditions of parole

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

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

2. You are to report in person to your District Parole Supervisor or his or her designated representative, or the designated representative of the Commission, immediately after you are released on parole from the institution, unless you have been given other written instructions by a designated representative of the Board 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 the assigned parole officer no later than the next business day after any arrest, after being served with or receiving a complaint or summons, and after accepting any pre-trial release including bail.

4. You are to notify the assigned parole officer no later than the next business day upon the issuance by the appropriate court, pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., or the provisions of a similar Federal or state statute, 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 reside at a residence approved by the assigned parole officer. Absence from the approved residence overnight without the approval of the assigned parole officer shall constitute a failure to reside at the approved residence.

6. You are to obtain the permission of the assigned parole officer prior to any change of residence. Absence from the approved residence for 24 hours or more without the approval of the assigned parole officer shall constitute a change of residence for the purpose of this condition.

7. You are to obtain permission prior to leaving the state of the approved residence for any purpose. If leaving the state for a period of less than 24 hours, verbal permission by the assigned parole officer shall be required. If leaving the state for a period of greater than 24 hours, written permission by the Supervising Parole Officer, District Parole Supervisor, or designated representative shall be required.

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

9. You are to refrain from owning or possessing any weapon enumerated in N.J.S.A. 2C:39-1.r.

10. You are to refrain from the purchase, use, possession, distribution, or administration of any narcotic drug, controlled dangerous substance, or controlled substance analog as defined in N.J.S.A. 2C:35-2; imitation controlled dangerous substance or imitation controlled substance analog as defined in N.J.S.A. 2C:35-11; or any paraphernalia as defined in N.J.S.A. 2C:36-1 related to such substances, except as prescribed by a physician.

11. You are required to make payment of any assessment, fine, penalty, lab fee, or restitution imposed by the sentencing court.

12. 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.

13. 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., or the provisions of a similar Federal or state statute.

14. 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.

15. You are to submit to drug or alcohol testing at any time as directed by the assigned parole officer.

16. You are to refrain from operating a motor vehicle without a valid driver's license.

17. You are to notify the assigned parole officer no later than the next business day of any change in employment status.

18. You are to submit to a search conducted by a parole officer, without a warrant of your person, place of resi-

dence, vehicle or other real or personal property within your control at any time a parole officer has a reasonable, 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.

(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) or 6.12(d), (e), (g), (h) and (i) 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/manslaughter victim, the Board members certifying parole release may impose any other specific conditions of parole deemed reasonable in order to reduce the likelihood of recurrence of criminal or delinquent behavior. In addition, the Board members certifying parole release may, giving due regard to a victim's request, impose a special condition that the parolee have no contact with the victim, which special condition may include, but need not be limited to, restraining the parolee from entering the victim's residence, place of employment, business or school, and from harassing or stalking the victim or victim's relatives in any way.

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

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

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

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

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

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

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

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

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

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

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

4. An additional special condition imposed pursuant to this subsection shall remain in effect until modified or vacated 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 or modified or vacated by the Board panel pursuant to N.J.A.C. 10A:71-6.6.

(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.

(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) Except as provided in (m) below, or unless otherwise directed by the Board panel or Board, a specific condition imposed in accordance with (e) above may be modified or vacated by the District Parole Supervisor or designated representative of the Commission if the circumstances of the parolee's case warrant such action.

(m) The following specific conditions imposed in accordance with (e) above may only be modified or vacated by the Board panel or Board:

1. The parolee is to refrain from contact with the victim.

2. The parolee is to participate in and successfully complete a mental health counseling or treatment program.

3. The parolee is to participate in and successfully complete a residential counseling or treatment program.

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

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

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

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

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

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

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

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

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

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

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

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

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

In (a)2, inserted references to designated representative of the Commission and substituted "a designated representative of the Board, Bureau of Parole or Commission" for "the Institutional Parole Officer"; in (a)3, inserted provision relating to a complaint or summons; in (a)9, inserted reference to Commission; in (e), (e)2, (e)3, and (f), inserted references to designated representative of the Commission.

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

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

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

Administrative correction.

See: 30 N.J.R. 1286(a).

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

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

In (a), added 10; and rewrote (e).

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

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

In (a), added 11 and 12; inserted new (f) through (h); recodified former (f) as (i); inserted (j); and recodified former (g) as (k).

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

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

Rewrote (i); and added (l).

Administrative correction.

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

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

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

In (f)2, inserted references to kidnapping, robbery first degree and robbery second degree.

Amended by R.2001 d.271, effective August 6, 2001.
See: 33 N.J.R. 1044(a), 33 N.J.R. 2672(a).

In (a), added 13 and 14; in (i), added a new 4 and deleted 5 and 6; rewrote (j); and added (m).

Amended by R.2005 d.127, effective April 18, 2005.

See: 36 N.J.R. 4407(a), 37 N.J.R. 1191(b).

Rewrote the section.

Amended by R.2008 d.168, effective June 16, 2008.

See: 39 N.J.R. 5049(a), 40 N.J.R. 3726(b).

In (a)16, substituted "a" for "the assigned" preceding "parole officer"; added (a)17; deleted former (l); and recodified former (m) as new (l).

Amended by R.2010 d.274, effective December 6, 2010.

See: 42 N.J.R. 1296(a), 42 N.J.R. 2960(a).

In (a)4 and (a)11, inserted ", or the provisions of a similar Federal or state statute"; in (a)11, inserted a comma following "behavior" and inserted a period at the end; and in (e), inserted "/manslaughter".

Amended by R.2014 d.013, effective January 6, 2014.

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

Rewrote (a); in (l), substituted "Except as provided in (m) below, or unless" for "Unless", and "in accordance with" for "pursuant to"; and added (m).

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 appropriate Board panel or the Board may modify or vacate a condition of parole at any time for cause.

(b) A parolee may apply to the appropriate Board panel or the Board at any time for modification or vacation of a condition of parole. A parole officer may apply to the appropriate Board panel or the Board at any time for modification or vacation of a condition of parole if the Board panel or the Board has reserved authority to modify or vacate 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 or vacation 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 or vacation of a condition of parole and shall cause a written record of such modification or vacation 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".

Amended by R.2001 d.271, effective August 6, 2001.

See: 33 N.J.R. 1044(a), 33 N.J.R. 2672(a).

Rewrote (a), (b) and (g); in (d), added "or vacation".

10A:71-6.7 Adjustment hearings; State prison parolees

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

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

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

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

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

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

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

2. The right to remain silent.

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

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

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

6. The right to waive such hearing.

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

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

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

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

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

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

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

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

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

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

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

In (b), substituted a reference to the Director of Parole for a reference to the Chief of the Bureau of Parole in the introductory paragraph.

10A:71-6.8 Forfeiture of commutation time credits

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

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

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

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

Substituted "adult" for "person".

10A:71-6.9 Discharge from parole

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

1. Such parolee has made a satisfactory adjustment while on parole; and

2. Continued supervision is not required;

3. The parolee has made full payment of any assessment, fine, penalty, lab fee or restitution or the parolee has in good faith established a satisfactory payment schedule; or

4. In the opinion of the Board panel continued supervision is not warranted or appropriate based upon a review of the facts and circumstances considered pursuant to N.J.A.C. 10A:71-7.10, 7.11, 7.12, 7.16 and 7.17, 7.17A or 7.17B.

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

1. In the case of adult parolees serving life sentences, after a period of seven years provided the parolee has been under annual supervision status for the final two years.

2. Except as provided above, in the case of juvenile parolees for murder and manslaughter and in the case of adult parolees serving sentences for murder, manslaughter, kidnapping, aggravated sexual assault (including attempts),

robbery first degree, arson, aggravated assault second degree, and sale or distribution or sale of controlled dangerous substance and possession of controlled dangerous substance with intent to distribute, after a period of two years provided the parolee is under advanced supervision status.

3. In the case of county parole absconders, after a period of two years from the expiration date of the original maximum sentence, provided the parolee has no known arrests.

4. In the case of juvenile and young adult parole absconders, after a period of three years from the date the parolee became an absconder, provided the parolee has no known arrests and provided the original maximum sentence has expired.

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

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

(c) The provisions of (a) and (b) above shall not preclude the appropriate Board panel from granting a juvenile or county parolee a complete discharge from parole prior to the expiration of the maximum term for which he or she was sentenced when the appropriate Board panel determines that good cause exists to grant such a discharge.

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

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

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

2. If the District Parole Supervisor or the designated representative of the Commission, as appropriate, determines that good reason does not exist to require continued supervision and that the parolee qualifies for discharge

pursuant to (a) above, a favorable discharge recommendation shall be submitted in writing to the appropriate Board panel. The discharge recommendation shall include the basis for the recommendation and a full explanation as to the adjustment of the parolee while under supervision. A copy of all chronological supervision reports shall be submitted with the discharge recommendation to the appropriate Board panel.

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

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

1. In the case of a parolee who has received a non-custodial term for the commission of an offense and the parolee is to be under community supervision through a probation or parole agency in another jurisdiction; or

2. The parolee has clearly established that continued parole supervision under a community plan in this State or consideration of a formal transfer of supervision to another state would not be conducive to the timely continuation of the parolee's community reintegration.

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

(h) A decision to discharge an adult parolee serving a sentence for murder shall be rendered by the Board. The Board may require an adult parolee to appear for an interview before the Board prior to a decision being rendered.

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

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

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

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

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

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

Section substantially amended.

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

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

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

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

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

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

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

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

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

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

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

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

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

Inserted a new (c); and recodified former (c) through (g) as (d) through (h).

Amended by R.2001 d.271, effective August 6, 2001.

See: 33 N.J.R. 1044(a), 33 N.J.R. 2672(a).

Rewrote (e)2.

Amended by R.2014 d.013, effective January 6, 2014.

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

Added new (h), and recodified former (h) as (i).

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 interstate compact for adult offender supervision (N.J.S.A. 2A:168-26 et seq.) and the interstate compact for juveniles (N.J.S.A. 9:23B-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 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.

Amended by R.2002 d.175, effective June 3, 2002.

See: 34 N.J.R. 359(a), 34 N.J.R. 1918(b).

In (e), deleted "Department's" preceding "Office of Interstate Services" in the first sentence.

Amended by R.2008 d.168, effective June 16, 2008.

See: 39 N.J.R. 5049(a), 40 N.J.R. 3726(b).

In (a), substituted "interstate compact for adult offender supervision (N.J.S.A. 2A:168-26 et seq.)" for "uniform act for out-of-State parolee supervision (N.J.S.A. 2A:168-14 et seq.)", "for" for "on" preceding "juveniles" and "9:23B-1" for "9:23-1" and inserted a comma following "offense".

10A:71-6.11 Community supervision for life

(a) Pursuant to N.J.S.A. 2C:43-6.4(a), any enumerated offense committed prior to January 14, 2004, 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 the 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 Division 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 no later than the next business day 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 no later than the next business day upon the issuance by the appropriate court, pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., or the provisions of a similar Federal or state statute, 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. Absence from the approved residence overnight without the approval of the assigned parole officer shall constitute a failure to reside at the approved residence;
6. Obtain the permission of the assigned parole officer prior to any change of residence. Absence from the approved residence for 24 hours or more without the approval of the assigned parole officer shall constitute a change of residence for the purpose of this condition;
7. Obtain permission prior to leaving the state of the approved residence for any purpose. If leaving the state for a period of less than 24 hours, verbal permission by the assigned parole officer shall be required. If leaving the state for a period of greater than 24 hours, written permission by the Supervising Parole Officer, District Parole Supervisor, or designated representative shall be required;
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 drug, controlled dangerous substance or controlled substance analog as defined in N.J.S.A. 2C:35-2, imitation controlled dangerous substance or imitation controlled substance analog as defined in N.J.S.A. 2C:35-11, or any paraphernalia as defined in N.J.S.A. 2C:36-1 related to such substances except as prescribed by a physician;

11. Cooperate in any medical and/or psychological examination or test 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, business or volunteer activity and prior to a change of employment;

15. Notify the assigned parole officer no later than the next business day of any change in employment status;

16. Refrain from any contact directly or through a third party by any means including, but not limited to, verbal, physical, written, or electronic, with the victim(s) of the offense unless contact is authorized by a Board panel or contact is authorized by the appropriate court;

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

18. 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., or the provisions of a similar Federal or state statute;

19. Refrain from any contact (verbal, physical, written, or electronic) with any group, club, association, or organization that engages in, promotes, or encourages illegal or sexually deviant behavior;

20. Submit to a search conducted by a parole officer, without a warrant, of the offender's person, place of residence, vehicle or other real or personal property within the offender's control at any time a parole officer has a reasonable 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;

21. Pursuant to N.J.S.A. 30:4-123.88, the State Parole Board, on at least an annual basis, may administer a polygraph examination to all offenders serving a special sentence of community supervision for life. You shall submit to a polygraph examination as directed by an Assistant District Parole Supervisor, District Parole Supervisor, or Supervising Parole Officer; and

22. Refrain from using any computer and/or device to create any social networking profile or to access any social networking service or chat room in the offender's name or any other name for any reason unless expressly authorized by the District Parole Supervisor.

i. "Chat room," as used in this paragraph, means any Internet website through which users have the ability

to communicate via messaging and which allows messages to be visible to all users or to a designated segment of users.

ii. "Internet website or application," as used in (b)22iv below, means an Internet website or application that allows users, through the creation of Internet web pages or profiles or other similar means, to provide personal information to the public or other users of the Internet website or application, and facilitates online social interactions by offering a mechanism for communication with other users of the Internet website or application. An Internet application shall include any program utilized in conjunction with a mobile or electronic device that permits access to a social networking service.

iii. "Peer-to-peer network," as used in (b)22iv below, means a connection of computer systems whereby files are shared directly between the systems on a network without the need of a central server.

iv. "Social networking service," as used in this paragraph, includes any Internet website or application, chat room, or peer-to-peer network, that:

(1) Contains profile pages of the members of the social networking service that include the names or nicknames of such members, photographs placed on the profile pages by such members, or any other personal or personally identifying information about such members and links to other profile pages on social networking service of friends or associates of such members that can be accessed by other members of or visitors to the social networking service;

(2) Provides members of or visitors to such social networking service the ability to leave messages or comments on the profile page that are visible to all or some visitors to the profile page;

(3) Provides members of or visitors to the social networking service the ability to engage in direct or real time communication with other users, such as a chat room or instant messenger; or

(4) Provides a form of electronic mail for members or visitors to the social networking service. For the purpose of this definition, social networking service does not include the use of e-mail exclusively for person to person communication.

(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;

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 District Parole Supervisor or designated representative. Staying overnight at a location where a minor is present shall constitute residing with any minor for the purpose of this condition.

(d) The following circumstances are deemed exceptions to the conditions specified in (c)1 and 2 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 and is being actively supervised by his or her parent or legal guardian (the offender may not be the 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;

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

5. When the district parole supervisor or designated representative may authorize the offender to have 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 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, and if the appropriate court affirms the determination of the county prosecutor, the offender serving a special sentence of community supervision for life shall refrain from the purchase, use, and possession of alcohol, in addition to the conditions specified in (b), (c), and (e) above.

(g) 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.

(h) The certificate shall include the conditions of community supervision for life as specified in (b), (c), (e), and (f) above and any special condition established by the Board panel.

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

(j) 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 representative shall make a written record of the delivery of the certificate and the refusal of the offender to acknowledge receipt of the certificate.

(k) 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.

(l) 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.

(m) 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).

(n) The search of an offender serving a special sentence of community supervision for life shall be conducted in accordance with N.J.A.C. 10A:72-6.

New Rule, R.1998 d.144, effective March 16, 1998.
See: 29 N.J.R. 4243(a), 30 N.J.R. 1044(a).

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

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

Amended by R.2000 d.50, effective February 7, 2000.
See: 31 N.J.R. 3579(a), 32 N.J.R. 472(b).

Inserted (b)22.
Amended by R.2002 d.175, effective June 3, 2002.
See: 34 N.J.R. 359(a), 34 N.J.R. 1918(b).

In (j), deleted "or Bureau of Parole, as appropriate" following "representative of the Board"; in (m), deleted "or Bureau of Parole" following "designated Board".

Amended by R.2005 d.127, effective April 18, 2005.
See: 36 N.J.R. 4407(a), 37 N.J.R. 1191(b).

Rewrote the section.
Amended by R.2008 d.168, effective June 16, 2008.
See: 39 N.J.R. 3049(a), 40 N.J.R. 3726(b).

In (b)19, deleted "and" from the end; in (b)20, substituted "a" for "the assigned" preceding "parole officer" and substituted "; and" for a period at the end; and added (b)21.

Amended by R.2010 d.274, effective December 6, 2010.
See: 42 N.J.R. 1296(a), 42 N.J.R. 2960(a).

In (b)4, inserted "or the provisions of a similar Federal or state statute,"; in (b)18, inserted "; or the provisions of a similar Federal or state statute"; in (b)20, deleted "and" from the end; in (b)21, substituted "; and" for a period at the end; added (b)22; in (c)3, substituted "district parole supervisor or designated representative" for "assigned parole officer"; in the introductory paragraph of (d), inserted "1 and 2"; in (d)2, inserted "(the offender may not be the parent or legal guardian)"; in (d)3, deleted "or" from the end; in (d)4, substituted "; or" for a period at the end; added (d)5; deleted former (f); and recodified former (g) through (o) as (f) through (n).

Amended by R.2011 d.252, effective November 21, 2011.
See: 43 N.J.R. 121(a), 43 N.J.R. 3087(a).

In (b)21, substituted "an Assistant District Parole Supervisor," for the second occurrence of "the", and inserted "; or Supervising Parole Officer".

Amended by R.2012 d.093, effective May 7, 2012.
See: 44 N.J.R. 30(a), 44 N.J.R. 1530(a).

Added (b)22i through (b)22iv.
Amended by R.2014 d.013, effective January 6, 2014.
See: 45 N.J.R. 1337(a), 46 N.J.R. 79(b).

Rewrote the section.

Case Notes

Community-supervised-for-life offender, who, for some time, has been released into the community, must be afforded due process of law before the New Jersey State Parole Board can impose a curfew confining the offender to his home. The level of process will depend on a number of variables and the unique circumstances of each case but, at a minimum, a supervised offender must be provided reasonable notice and a meaningful opportunity to be heard. *Jamgochian v. New Jersey State Parole Bd.*, 196 N.J. 222, 952 A.2d 1060, 2008 N.J. LEXIS 899 (2008).

Statute requiring persons subject to community supervision for life (CSL) be treated in accordance with laws and regulations pertaining to paroled persons, when read in conjunction with Parole Act, and CSL regulations, was not unconstitutionally vague, as it provided adequate notice that use of controlled dangerous substance (CDS) by defendant, who was subject to CSL, was prohibited, and defendant received full written notice of conditions of CSL, one of which proscribed use of a CDS. *State v. Bond*, 365 N.J. Super. 430, 839 A.2d 888.

10A:71-6.12 Parole supervision for life

(a) Pursuant to N.J.S.A. 2C:43-6.4(a), any enumerated offense committed on or after January 14, 2004, a court imposing sentence on a person who has been convicted of aggravated sexual assault, aggravated criminal sexual contact, kidnapping pursuant to N.J.S.A. 2C:13-1(c)2, engaging in sexual conduct which would impair or debauch the morals of

a child pursuant to N.J.S.A. 2C:24-4(a), endangering the welfare of a child pursuant to N.J.S.A. 2C:24-4(b)3, luring or an attempt to commit any of these offenses 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 parole supervision for life.

(b) The special sentence of parole supervision for life shall commence pursuant to N.J.S.A. 2C:43-6.4(b) immediately upon the offender's release from incarceration. If the offender is serving a sentence of incarceration for another offense at the time the offender completes the custodial portion of the sentence imposed on the present offense, the special sentence of parole supervision for life shall not commence until the offender is actually released from incarceration for the other offense.

(c) Pursuant to N.J.S.A. 2C:43-6.4(b), an offender sentenced to a special sentence of parole supervision for life shall remain in the legal custody of the Commissioner. The offender shall be supervised by the Division of Parole and shall be subject to the provisions and conditions established pursuant to (d) below; subject to any special conditions established by the appropriate Board panel; and subject to any conditions imposed by the sentencing court.

(d) An offender sentenced to a special sentence of parole supervision for life shall comply with the following:

1. Obey all laws and ordinances;
2. Report to the assigned parole officer as instructed;
3. Notify the assigned parole officer no later than the next business day 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 no later than the next business day upon the issuance by the appropriate court, pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., or the provisions of a similar Federal or state statute, 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. Absence from the approved residence overnight without the permission of the assigned parole officer shall constitute a failure to reside at the approved residence;
6. Obtain the permission of the assigned parole officer prior to any change of residence. Absence from the approved residence for 24 hours or more without the

permission of the assigned parole officer shall constitute a change of residence for the purpose of this condition;

7. Obtain permission prior to leaving the state of the approved residence for any purpose. If leaving the state for a period of less than 24 hours, verbal permission by the assigned parole officer shall be required. If leaving the state for a period of greater than 24 hours, written permission by the Supervising Parole Officer, District Parole Supervisor or designated representative shall be required;

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 drug, controlled dangerous substance or controlled substance analog as defined in N.J.S.A. 2C:35-2, imitation controlled dangerous substance or imitation controlled substance analog as defined in N.J.S.A. 2C:35-11, or any paraphernalia as defined in N.J.S.A. 2C:36-1 related to such substances except as prescribed by a physician;

11. Cooperate in any medical and/or psychological examination or test 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, business or volunteer activity and prior to a change of employment;

15. Notify the assigned parole officer no later than the next business day of any change in employment status;

16. Refrain from any contact directly or through a third party by any means including, but not limited to, verbal, physical, written, or electronic, with the victim(s) of the offense unless contact is authorized by a Board panel or contact is authorized by the appropriate court;

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

18. Refrain from behavior that 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., or the provisions of a similar Federal or state statute;

19. Refrain from operating a motor vehicle without a valid driver's license;

20. Refrain from any contact (verbal, physical, written, or electronic) with any group, club, association, or organization that engages in, promotes or encourages illegal or sexually deviant behavior;

21. Submit to a search conducted by a parole officer, without a warrant, of the offender's person, place of residence, vehicle or other real or personal property within the offender's control at any time a parole officer has a reasonable, 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;

22. Make payment of any assessment, fine, penalty, lab fee, or restitution imposed by the sentencing court;

23. Pursuant to N.J.S.A. 30:4-123.88, the State Parole Board, on at least an annual basis, may administer a polygraph examination to all offenders serving a special sentence of parole supervision for life. You shall submit to a polygraph examination as directed by an Assistant District Parole Supervisor, District Parole Supervisor, or Supervising Parole Officer; and

24. Refrain from using any computer and/or device to create any social networking profile or to access any social networking service or chat room in the offender's name or any other name for any reason unless expressly authorized by the District Parole Supervisor.

i. "Chat room," as used in this paragraph, means any Internet website through which users have the ability to communicate via messaging and which allows messages to be visible to all users or to a designated segment of users.

ii. "Internet website or application," as used in (d)24iv below, means an Internet website or application that allows users, through the creation of Internet web pages or profiles or other similar means, to provide personal information to the public or other users of the Internet website or application, and facilitates online social interactions by offering a mechanism for communication with other users of the Internet website or application. An Internet application shall include any program utilized in conjunction with a mobile or electronic device that permits access to a social networking service.

iii. "Peer-to-peer network," as used in (d)24iv below, means a connection of computer systems whereby files are shared directly between the systems on a network without the need of a central server.

iv. "Social networking service," as used in this paragraph, includes any Internet website or application, chat room, or peer-to-peer network, that:

(1) Contains profile pages of the members of the social networking service that include the names or nicknames of such members, photographs placed on the profile pages by such members, or any other personal or personally identifying information about such members and links to other profile pages on social networking service of friends or associates of such members that can be accessed by other members of or visitors to the social networking service;

(2) Provides members of or visitors to such social networking service the ability to leave messages or comments on the profile page that are visible to all or some visitors to the profile page;

(3) Provides members of or visitors to the social networking service the ability to engage in direct or real time communication with other users, such as a chat room or instant messenger; or

(4) Provides a form of electronic mail for members or visitors to the social networking service. For the purpose of this definition, social networking service does not include the use of e-mail exclusively for person to person communication.

25. Waive extradition to the State of New Jersey from any jurisdiction in which the offender is apprehended and detained for violation of parole supervision for life status and not contest any effort by any jurisdiction to return the offender to the State of New Jersey.

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

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

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 District Parole Supervisor or designated representative. Staying overnight at a location where a minor is present shall constitute residing with any minor for the purpose of this condition.

(f) The following circumstances are deemed exceptions to the conditions specified in (e)1 and 2 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 and being actively supervised by his or her parent or legal guardian (the offender may not be the 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;

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

5. When the district parole supervisor or designated representative may authorize the offender to have contact with a minor.

(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 commits the offender to the Adult Diagnostic and Treatment Center for a program of specialized treatment, the offender serving a special sentence of parole supervision for life shall, in addition to the conditions specified in (d) and (e) above, participate in and successfully complete any program of counseling or therapy identified by the treatment staff of the Adult Diagnostic and Treatment Center.

(h) 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 and the appropriate court affirms the determination of the county prosecutor, the offender serving a special sentence of parole supervision for life shall, in addition to the conditions specified in (d), (e), and (g) above, refrain from the purchase, use, and possession of alcohol.

(i) Prior to an offender, subject to the provision 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 parole supervision, the appropriate Board panel shall issue a written certificate which shall be delivered to the offender by a designated representative of the Board.

(j) If the sentencing court suspends the imposition of sentence and the offender immediately commences the service of the special sentence of parole supervision for life the appropriate Board panel shall issue, as soon as administratively possible, a written certificate which shall be delivered to the offender by a designated representative of the Board.

(k) The certificate shall include the conditions of parole supervision for life as specified in (d), (e), (g), and (h) above and any special condition established by the Board panel. If the sentencing court suspends the imposition of sentence and the offender immediately commences the service of the special sentence of parole supervision for life, the certificate shall also include, as a special condition, any condition(s) established by the sentencing court.

(l) At the time of delivery of the certificate, the conditions of parole 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 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 a special condition.

1. Except as provided in (n)4 below, a special condition imposed pursuant to this subsection shall be deemed effective on the date of imposition.

2. A special condition imposed pursuant to this subsection shall remain in effect, except as provided in (n)3 below, until modified or vacated by the District Parole Supervisor or Assistant District Parole Supervisor or the designated representative of the District Parole Supervisor.

3. Upon notice being received by the Board, the appropriate Board panel upon review may determine to vacate or modify the special condition. The Board panel shall notify the District Parole Supervisor in writing of its determination.

4. A special condition requiring the offender to notify an employer or intended employer of his or her parole supervision for life status and criminal record shall not be deemed effective until affirmed by the appropriate Board panel.

(o) As authorized by N.J.S.A. 30:4-123.51b(c), an offender's parole supervision for life status may be revoked for a violation of any condition of supervision and the offender returned to custody in accordance with the provisions of N.J.S.A. 30:4-123.60 to 123.63 and 123.65 and the provisions of N.J.A.C. 10A:71-7 as appropriate.

(p) If an offender's parole supervision for life status is revoked by the appropriate Board panel and the offender is returned to custody, the offender shall serve the following time period in confinement upon the initial revocation:

1. Eighteen months if the offender has committed a crime of the first degree;

2. Sixteen months if the offender has committed a crime of the second degree; or

3. Fourteen months if the offender has committed a crime of the third degree;

4. Twelve months if the offender has committed a crime of the fourth degree or any other offense, or violated any other condition of supervision.

(q) For each subsequent revocation of an offender's parole supervision for life status, the offender shall serve an additional time period of two months in excess of the term imposed for the initial or a subsequent revocation regardless of the basis for the initial or subsequent revocation action. Any time period established upon the revocation of an offender's parole supervision for life status shall not, pursuant to N.J.S.A. 30:4-123.51b(c), exceed 18 months.

(r) The time period established pursuant to (p) or (q) above shall not, pursuant to N.J.S.A. 30:4-123.51b.c, be reduced by commutation time for good behavior (N.J.S.A. 30:4-140) or credits for diligent application of work and other institutional assignments (N.J.S.A. 30:4-92).

(s) In accordance with N.J.S.A. 30:4-123.51b.c, the time period to be served pursuant to (p) or (q) above shall not for the purpose of establishing a primary parole eligibility date pursuant to N.J.S.A. 30:4-123.51.h be aggregated with a term of imprisonment imposed on the offender for the commission of any other offense.

(t) Upon the completion of the time period established pursuant to (p) or (q) above, the offender shall be released from confinement unless the offender is serving a sentence of incarceration for another crime. Upon the offender being released from confinement the offender shall remain under parole supervision for life.

(u) An offender shall remain under parole 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).

(v) The search of an offender serving a special sentence of parole supervision for life shall be conducted in accordance with N.J.A.C. 10A:72-6.

New Rule, R.2005 d.127, effective April 18, 2005.
See: 36 N.J.R. 4407(a), 37 N.J.R. 1191(b).
Amended by R.2008 d.168, effective June 16, 2008.
See: 39 N.J.R. 5049(a), 40 N.J.R. 3726(b).

In (d)20, deleted "and" at the end; in (d)21, substituted "a" for "the assigned" preceding "parole officer" and substituted a semicolon for the period at the end; added (d)22 and (d)23; and in (f), inserted the second sentence.

Amended by R.2010 d.274, effective December 6, 2010.
See: 42 N.J.R. 1296(a), 42 N.J.R. 2960(a).

In (d)4, inserted "or under the provisions of a similar Federal or state statute,"; in (d)18, inserted ", or under the provisions of a similar Federal or state statute"; in (d)22, deleted "and" from the end; in (d)23, substituted "; and" for a period at the end; added (d)24; in (e)3, substituted "district parole supervisor or designated representative" for "assigned parole officer"; in the introductory paragraph of (f), inserted "1 and 2"; in (f)2, inserted "(the offender may not be the parent or legal guardian)"; in (f)3, deleted "or" from the end; in (f)4, substituted "; or" for a period at the end; added (f)5; deleted former (h); and recodified former (i) through (w) as (h) through (v).

Administrative correction.

See: 43 N.J.R. 188(b).

Amended by R.2011 d.252, effective November 21, 2011.

See: 43 N.J.R. 121(a), 43 N.J.R. 3087(a).

In (d)23, substituted "an Assistant District Parole Supervisor," for the second occurrence of "the", and inserted ", or Supervising Parole Officer".

Administrative correction.

See: 44 N.J.R. 166(a).

Amended by R.2012 d.093, effective May 7, 2012.

See: 44 N.J.R. 30(a), 44 N.J.R. 1530(a).

Added (d)24i through (d)24iv.

Amended by R.2014 d.013, effective January 6, 2014.

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

Rewrote the section.

10A:71-6.13 Polygraph examinations

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

(b) A polygraph examination shall be conducted by a polygrapher trained specifically in the use of the polygraph for monitoring of sex offenders, where available, and shall be paid for by the offender.

(c) The results of the polygraph examination shall not be used as evidence in court to prove that a violation of the special sentence of community or parole supervision for life or condition of discharge pursuant to N.J.S.A. 30:4-27.36 has occurred.

New Rule, R.2008 d.168, effective June 16, 2008.

See: 39 N.J.R. 5049(a), 40 N.J.R. 3726(b).

SUBCHAPTER 7. REVOCATION OF PAROLE

10A:71-7.1 Commencement of revocation proceedings

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

10A:71-7.2 Issuance of warrants

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

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

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

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

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

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

(e) If a parolee has been sentenced to a custodial term or sentenced to a custodial term as a condition of probation for a crime committed while on parole supervision or in the case of a juvenile parolee adjudicated delinquent for an act which, if committed by an adult, would constitute a crime and if a parole warrant has not been previously issued, a parole warrant shall be issued by the appropriate individual and filed against the parolee at the institution in which the parolee is confined.

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

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

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

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

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

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

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

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

In (b), substituted a reference to the Director of Parole for a reference to the Chief of the Bureau of Parole, and inserted a reference to Supervising Parole Officers.

Amended by R.2001 d.271, effective August 6, 2001.

See: 33 N.J.R. 1044(a), 33 N.J.R. 2672(a).

Added (e).

Case Notes

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

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

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

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

10A:71-7.3 Motion for accelerated revocation

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

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

1. Such application shall include:

- i. The amount of bail, if any, set in the case; and
- ii. An evaluation of the likelihood of the parolee posting bail or being released from detention; and
- iii. Appropriate discovery material which will clearly document that the parolee may have committed a new crime or an act of delinquency; and
- iv. The reasons why the parolee poses a danger to public safety.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In (b) and (d), substituted references to the Director of Parole for references to the Chief of the Bureau of Parole throughout.

Amended by R.2002 d.175, effective June 3, 2002.

See: 34 N.J.R. 359(a), 34 N.J.R. 1918(b).

Inserted "or his or her designee" following "Director of Parole" throughout.

10A:71-7.4 Preliminary hearing

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

10A:71-7.5 Preliminary hearing; scheduling

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

(b) A preliminary hearing may be conducted by videoconferencing.

(c) 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.

(d) If the hearing officer or the parole 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.

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

Amended by R.2001 d.271, effective August 6, 2001.
Sec: 33 N.J.R. 1044(a), 33 N.J.R. 2672(a).

Added a new (b); recodified former (b) through (d) as new (c) through (e).

Amended by R.2002 d.175, effective June 3, 2002.

Sec: 34 N.J.R. 359(a), 34 N.J.R. 1918(b).

Inserted references to the parole officer following references to the hearing officer throughout.

10A:71-7.6 Designation of preliminary hearing officers

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

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

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

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

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

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

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

In (a), inserted reference to the Commission.

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

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

In (a), substituted a reference to the Director of Parole for a reference to the Chief of the Bureau of Parole.

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

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

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

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

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

2. The right to representation by an attorney or such other qualified person as the parolee may retain, or if the parolee is determined to be indigent, the right to representation by an attorney assigned pursuant to the pro bono assignment program, provided the parolee first makes such a request based on a timely and colorable claim that:

i. The parolee did not commit the alleged violation of the specified parole condition(s); or

ii. The parolee did commit the violation of the specified parole condition(s), but there are substantial reasons which justified or mitigated the violation(s) and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present.

3. The right to remain silent.

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

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

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

7. The right to waive such hearing.

8. The right to request postponement of such hearing.

As amended, R.1981 d.106, effective May 7, 1981.

Sec: 13 N.J.R. 101(b), 13 N.J.R. 302(a).

(a): written notice of preliminary hearing requirement changed from "within seven days of the parolee's arrest as a parole violator" to "at least three days prior to the preliminary hearing".

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

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

Added text to (b) "or to the address of record".

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

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

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

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

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

Amended by R.2005 d.127, effective April 18, 2005.

Sec: 36 N.J.R. 4407(a), 37 N.J.R. 1191(b).

In (c), substituted "pursuant to the pro bono assignment program" for "from the list maintained in accordance with R.3:27-2," in 2.

10A:71-7.8 Preliminary hearing; determination of probable cause

(a) At the conclusion of the preliminary hearing, the hearing officer shall determine whether probable cause exists to believe that the parolee has seriously or persistently violated conditions of his or her parole and whether revocation of parole is desirable.

(b) Immediately upon such determination, the hearing officer shall verbally advise the parolee of the determination.

10A:71-7.9 Status of parolee pending parole revocation hearing

(a) The hearing officer shall order the immediate withdrawal of the warrant, except as provided in (b) below, if he or she determines that:

1. Probable cause does not exist to believe that the parolee has seriously or persistently violated conditions of parole; or
2. Probable cause does exist to believe that the parolee has seriously or persistently violated conditions of parole but that revocation of parole is not desirable.

(b) In the case of a parolee who is on parole on a sentence imposed for the offense of murder, aggravated manslaughter, manslaughter, death by vehicular homicide, aggravated assault, kidnapping, aggravated sexual assault, sexual assault, robbery first degree, burglary second degree, terroristic threats or endangering the welfare of a child, the warrant shall not be withdrawn pursuant to (a) above if the hearing officer determines that, based on the review of the hearing record and the review of the Board's records on the parolee, the parolee would pose a danger to the public safety. In such a case, the parolee shall remain in custody pending a review by the appropriate Board panel pursuant to N.J.A.C. 10A:71-7.11.

(c) When the hearing officer determines that probable cause exists to believe that the parolee has seriously or persistently violated conditions of parole, it shall be the responsibility of the hearing officer to determine whether the parolee shall be taken into custody pursuant to N.J.A.C. 10A:71-7.2, continued in custody or released from custody pending the revocation hearing.

1. If the hearing officer determines that the parolee should be released from custody, the hearing officer shall have the authority to direct that the warrant be withdrawn.

2. The parolee shall be taken into custody or continued in custody only where, in the opinion of the hearing officer, the parolee poses a danger to the public safety or where the parolee may not appear at the revocation hearing.

(d) In the case of a parolee who is on parole on a sentence imposed for the offense of murder, aggravated manslaughter, manslaughter, death by vehicular homicide, aggravated assault, kidnapping, aggravated sexual assault, sexual assault, robbery first degree, burglary second degree, terroristic threats or endangering the welfare of a child, the warrant shall not be withdrawn pursuant to (c) above unless the hearing officer determines, based on the review of the hearing record and the review of the Board's records on parolee, that the parolee does not pose a danger to the public safety. If the warrant is authorized to be withdrawn, the hearing officer shall summarize in the Notice of Decision issued pursuant to N.J.A.C. 10A:71-7.10 the basis for the determination that the parolee does not pose a danger to the public safety.

(e) When the hearing officer determines that the parolee should be released from custody, the hearing officer shall establish any parole conditions deemed reasonable in order to reduce the likelihood of recurrence of criminal behavior. Any parole condition established by the hearing officer shall be subject to review by the appropriate Board panel.

(f) When the hearing officer determines that a State prison parolee should be released pursuant to (a) above, the hearing officer may direct any loss of commutation time credits deemed necessary pursuant to N.J.A.C. 10A:71-6.8.

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

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

Added text "taken into custody".

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

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

Rewrote the section.

Amended by R.2005 d.127, effective April 18, 2005.

See: 36 N.J.R. 4407(a), 37 N.J.R. 1191(b).

In (a), substituted "order the immediate withdrawal of" for "immediately withdraw".

Case Notes

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

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

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

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

10A:71-7.10 Preliminary hearing; notice of decision

(a) At the conclusion of the preliminary hearing, it shall be the responsibility of the hearing officer to forward a Notice of Decision to the parolee and the parolee's attorney, the Department or Commission, as appropriate, and the appropriate Board panel within seven days of the date of the preliminary hearing.

(b) Such Notice of Decision shall consist of a summary of the proceeding, and shall contain the reasons for the hearing officer's decision that probable cause does or does not exist, the evidence relied upon in support of such decision and the hearing officer's decision as to the status of the parolee pending the revocation hearing.

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

(d) The parolee and the parolee's attorney may submit written exceptions or comments on the hearing summary. Such exceptions shall be forwarded to the appropriate Board panel within seven days after the receipt of the hearing officer's report unless the parolee waives the right to submit exceptions.

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

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

Substantially amended.

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

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

In (a), inserted reference to the Commission.

10A:71-7.11 Board panel action pending revocation hearing

(a) The appropriate Board panel shall review the preliminary hearing Notice of Decision within 15 days of the date of the preliminary hearing. The Board panel, upon review of the preliminary hearing Notice of Decision, may modify or overrule the determinations of the preliminary hearing officer.

(b) If the Board panel modifies or overrules the determinations of the preliminary hearing officer, the panel shall take appropriate action on the parolee's case and shall notify the parolee, the parolee's attorney, and the hearing officer in writing as to its decision and the reasons therefor.

(c) The parolee shall be continued in custody or taken into custody only where, in the opinion of the Board panel, the parolee represents a danger to public safety or where the parolee may not appear at the revocation hearing.

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

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

(a) added "upon review"; (b) added "the parolee's attorney".

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

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

In (a), added a new first sentence.

10A:71-7.12 Parole revocation hearing

(a) A parole revocation hearing shall be conducted when:

1. A hearing officer determines that probable cause exists to believe that the parolee has seriously or persistently violated the conditions of parole and that revocation of parole is desirable; or

2. The parolee has been convicted of a crime committed while on parole or in the case of a juvenile parolee adjudicated delinquent for an act which, if committed by an adult, would constitute a crime.

(b) A parole revocation hearing may be conducted when the parolee has been convicted of a disorderly persons offense committed while on parole or in the case of a juvenile parolee adjudicated delinquent for an act which, if committed by an adult, would constitute a disorderly persons offense.

(c) If the parolee has not been convicted of a crime committed while on parole or in the case of a juvenile parolee not adjudicated delinquent for an act which, if committed by an adult, would constitute a crime, the purpose of the revocation hearing shall be to determine:

1. Whether, by clear and convincing evidence, the parolee has seriously or persistently violated the conditions of parole; and

2. Whether revocation of parole is desirable.

(d) If the parolee has been convicted of a crime committed while on parole or in the case of a juvenile parolee adjudicated delinquent for an act which, if committed by an adult, would constitute a crime, the purpose of the revocation hearing shall be to determine whether, by clear and convincing evidence, good cause exists why the parolee should not be returned to confinement.

(e) The parole revocation hearing shall be conducted by a hearing officer who shall be a designated representative of the Board and who did not conduct the preliminary hearing.

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

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

(b): Old text deleted and new substituted; (e) added.

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

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

Inserted provisions relating to juvenile parolees throughout.

Case Notes

Imposition of a five-year future eligibility term (FET) upon parole revocation for defendant's marijuana possession, a term 400% greater than the guideline maximum, was unreasonable and arbitrary, and violated substantive due process; conduct recited by parole board's decision, including drug use and violence, occurred over a quarter of a century earlier, and the conclusion that defendant's possession of marijuana evidenced a return to his law-breaking days because he had committed murder while under the influence of alcohol and marijuana was unsupported by any scientific or medical authority suggesting that the use of marijuana caused violent behavior. *Hunterson v. DiSabato*, 137 F.Supp.2d 529 (2001).

Parolee stated a § 1983 claim against chairperson of parole board by alleging that preliminary hearing decision was not reviewed in timely fashion and that final revocation hearing was not conducted within 60

days of parolee's arrest for alleged parole violation, resulting in his incarceration for over three and one-half months. *Friedland v. Fauver*, 6 F.Supp.2d 292 (D.N.J. 1998).

Reasonable cause to believe parolee committed crime is insufficient basis for parole revocation (citing former N.J.A.C. 10:70-6.3). *White v. New Jersey State Parole Bd.*, 136 N.J.Super. 360, 346 A.2d 415 (App.Div.1975).

10A:71-7.13 Revocation hearing; scheduling

(a) Except as provided herein, the revocation hearing shall be conducted within 60 days of the date the parolee was taken into custody as a parole violator, or, where the parolee was sentenced or committed to a State correctional or juvenile facility, within 60 days of the date of sentence or commitment.

(b) A revocation hearing may be conducted by videoconferencing. A record of the hearing shall be made pursuant to N.J.A.C. 10A:71-7.16(a).

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

(d) If the hearing officer requests a postponement of the revocation hearing, such postponement, if granted, shall not exceed 120 days from the original deadline determined pursuant to (a) above.

(e) If the request for postponement by the hearing officer or by a parolee who is not in custody is due to unanticipated scheduling problems or other emergent circumstances, such postponement shall be granted by the appropriate Board panel and shall not exceed 60 days from the originally scheduled date of the revocation hearing.

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

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

(d) substantially amended.

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

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

In (a), inserted reference to juvenile facility.

Amended by R.2001 d.271, effective August 6, 2001.

See: 33 N.J.R. 1044(a), 33 N.J.R. 2672(a).

Added a new (b); recodified former (b) through (d) as new (c) through (e).

10A:71-7.14 Revocation hearing; notice of hearing

(a) It shall be the responsibility of designated Board staff to give written notice to the parolee of the time, date and place of the revocation hearing.

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

(c) Such notice shall inform the parolee of the following: the purpose of the hearing; the violation(s) of parole conditions alleged; the time, date, place and circumstances of the alleged violation(s); the name(s) of any witness(es) scheduled

to appear at the hearing; and the following rights to which the parolee shall be entitled at the revocation hearing:

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

2. The right to representation by an attorney or such other qualified person as the parolee may retain, or if the parolee is determined to be indigent, the right to representation by an attorney assigned pursuant to the pro bono assignment program, provided the parolee first makes such a request based on a timely and colorable claim that:

i. The parolee did not commit the alleged violation of the specified parole condition(s); or

ii. The parolee did commit the violation of the specified parole condition(s), but there are substantial reasons which justified or mitigated the violation(s) and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present.

3. The right to remain silent.

4. The right to present witnesses to testify in his or her behalf as to matters relevant to the hearing.

5. The right to have the hearing officer issue a subpoena to compel the appearance of witnesses, provided that a prima facie showing is made that the prospective witnesses will provide material testimony relevant to the alleged violation(s) of parole.

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

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

8. The right to waive such hearing.

9. The right to request postponement of such hearing.

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

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

Substantially amended.

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

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

Amended by R.2008 d.168, effective June 16, 2008.

See: 39 N.J.R. 5049(a), 40 N.J.R. 3726(b).

In (a), substituted "designated Board staff" for "the hearing officer"; and in the introductory paragraph of (c)2, substituted "pursuant to the pro bono assignment program" for "from the list maintained in accordance with R.3:27-2" and inserted "such a request based on".

10A:71-7.15 Status of parolee pending Board panel action

(a) The hearing officer shall immediately withdraw the warrant, except as provided in (b) below, if he or she determines upon the conclusion of the parole revocation hearing that:

1. Clear and convincing evidence does not exist to believe that the parolee has seriously or persistently violated conditions of parole; or

2. Clear and convincing evidence does exist to believe that the parolee has seriously or persistently violated conditions of parole but that revocation of parole is not desirable.

(b) In the case of a parolee who is on parole on a sentence imposed for the offense of murder, aggravated manslaughter, manslaughter, death by vehicular homicide, aggravated assault, kidnapping, aggravated sexual assault, sexual assault, robbery first degree, burglary second degree, terroristic threats or endangering the welfare of a child, the warrant shall not be withdrawn pursuant to (a) above if the hearing officer determines that, based on the review of the hearing record and the review of the Board's records on the parolee, the parolee would pose a danger to the public safety. In such case, the parolee shall remain in custody pending a review by the appropriate Board panel pursuant to N.J.A.C. 10A:71-7.17, 17.17A or 17.17B.

(c) When the hearing officer determines that clear and convincing evidence exists to believe that the parolee has seriously or persistently violated conditions of parole, it shall be the responsibility of the hearing officer to determine whether the parolee shall be taken into custody pursuant to N.J.A.C. 10A:71-7.2, continued in custody or released from custody pending Board panel review.

1. If the hearing officer determines that the parolee should be released from custody, the hearing officer shall have the authority to direct that the warrant be withdrawn.

2. The parolee shall be taken into custody or continued in custody only where, in the opinion of the hearing officer, the parolee poses a danger to the public safety.

(d) In the case of a parolee who is on parole on a sentence imposed for the offense of murder, aggravated manslaughter, manslaughter, death by vehicular homicide, aggravated assault, kidnapping, aggravated sexual assault, sexual assault, terroristic threats or endangering the welfare of a child, the warrant shall not be withdrawn pursuant to (c) above unless the hearing officer determines, based on the review of the hearing record and the review of the Board's records on the parolee, that the parolee does not pose a danger to the public safety. If the warrant is authorized to be withdrawn, the hearing officer shall include in the summary report prepared pursuant to N.J.A.C. 10A:71-7.16 the basis for the determination that the parolee does not pose a danger to the public safety.

(e) When the hearing officer determines that the parolee should be released from custody, the hearing officer shall establish any parole conditions deemed reasonable in order to reduce the likelihood of recurrence of criminal behavior. Any parole condition established by the hearing officer shall be subject to review by the appropriate Board panel.

New Rule, R.1999 d.252, effective August 2, 1999.
See: 31 N.J.R. 1140(a), 31 N.J.R. 2218(a).

Former N.J.A.C. 10A:71-7.15, Record of the revocation hearing, recodified to N.J.A.C. 10A:71-7.16.

10A:71-7.16 Record of the revocation hearing

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

(b) The hearing officer shall prepare a written summary which shall summarize the revocation hearing and contain the hearing officer's opinion as to whether the alleged violation(s) has been substantiated and the reason(s) therefore.

1. Such hearing summary shall be forwarded to the appropriate Board panel.

2. A copy of the hearing summary shall be forwarded to the parolee's attorney or directly to the parolee where he or she has appeared pro se in order that the parolee or his or her attorney may object to or comment on the hearing summary by submitting written exceptions to such summary. Such exceptions shall be forwarded to the appropriate Board panel within seven days after receipt of the hearing officer's hearing summary. A copy of the hearing summary shall also be forwarded to the District Parole Supervisor or the designated representative of the Commission, as appropriate.

(c) The hearing officer may verbally advise the parolee at the time of the hearing of the hearing officer's opinion as to whether the alleged violation(s) has been substantiated.

Amended by R.1980 d.434, effective October 7, 1980.
See: 12 N.J.R. 537(a), 12 N.J.R. 665(a).

(c) added.

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

"has" substituted for "have".

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

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

In (b)2, deleted "appropriate" preceding "District Parole Supervisor" and inserted reference to a designated representative of the Commission.

Recodified from N.J.A.C. 10A:71-7.15 by R.1999 d.252, effective August 2, 1999.

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

Former N.J.A.C. 10A:71-7.16, Board panel action; schedule of future parole eligibility dates upon revocation of parole for inmates who have violated parole prior to October 17, 1994, recodified to N.J.A.C. 10A:71-7.17.

Case Notes

Imposition of a five-year future eligibility term (FET) upon parole revocation for defendant's marijuana possession, a term 400% greater than the guideline maximum, was unreasonable and arbitrary, and

violated substantive due process; conduct recited by parole board's decision, including drug use and violence, occurred over a quarter of a century earlier, and the conclusion that defendant's possession of marijuana evidenced a return to his law-breaking days because he had committed murder while under the influence of alcohol and marijuana was unsupported by any scientific or medical authority suggesting that the use of marijuana caused violent behavior. *Hunterson v. DiSabato*, 137 F.Supp.2d 529 (2001).

10A:71-7.16A (Reserved)

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

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

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(e) or (f).

(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) Upon revocation of parole for the commission of a crime while on parole, an adult inmate:

1. Who has committed a fourth degree crime shall serve not less than eight nor more than 12 months except as provided in (g) and (p) below and N.J.A.C. 10A:71-3.2;
2. Who has committed a third degree crime shall serve not less than 12 nor more than 16 months except as provided in (g) and (p) below and N.J.A.C. 10A:71-3.2;
3. Who has committed a second degree crime shall serve not less than 16 nor more than 28 months except as provided in (g) and (p) below and N.J.A.C. 10A:71-3.2;
4. Who has committed a first degree crime shall serve not less than 28 nor more than 48 months except as provided in (g) and (p) below and N.J.A.C. 10A:71-3.2;
5. Who has committed the crimes of murder or kidnapping shall serve not less than four years, eight months nor more than eight years, four months except as provided in (g) and (p) below and N.J.A.C. 10A:71-3.2;
6. Upon the second or subsequent revocation of parole for the commission of a crime, 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 convictions.
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.

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

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

Rewrote (f).

Amended by R.2010 d.274, effective December 6, 2010.

See: 42 N.J.R. 1296(a), 42 N.J.R. 2960(a).

In (b)5, substituted "(e) or (f)" for "(d) or 6.4(e)"; in the introductory paragraph of (n), substituted "(g)1" for "(g)(1)"; and in (n)6, substituted "convictions" for "conditions".

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(e) or (f).

(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) Upon revocation of parole for the commission of a crime while on parole, an adult inmate:

1. Who has committed a fourth degree crime shall serve not less than eight nor more than 12 months except as provided in (h) and (q) below and N.J.A.C. 10A:71-3.2;
2. Who has committed a third degree crime shall serve not less than 12 nor more than 16 months except as provided in (h) and (q) below and N.J.A.C. 10A:71-3.2;

3. Who has committed a second degree crime shall serve not less than 16 nor more than 28 months except as provided in (h) and (q) below and N.J.A.C. 10A:71-3.2;

4. Who has committed a first degree crime shall serve not less than 28 nor more than 48 months except as provided in (h) and (q) below and N.J.A.C. 10A:71-3.2;

5. Who has committed the crimes of murder or kidnapping shall serve not less than four years, eight months nor more than eight years, four months except as provided in (h) and (q) below and N.J.A.C. 10A:71-3.2;

6. Upon the second or subsequent revocation of parole for the commission of a crime, 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 (i) 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.

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

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

Rewrote (g).

Amended by R.2010 d.274, effective December 6, 2010.

See: 42 N.J.R. 1296(a), 42 N.J.R. 2960(a).

In (c)5, substituted "(e) or (f)" for "(d) or (e)"; and in the introductory paragraph of (o), substituted "(i)" for "(j)".

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(e) or (f).

(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) Upon revocation of parole for the commission of a crime, an adult inmate:

1. Who has committed a fourth degree crime shall serve not less than eight nor more than 12 months except as provided in (f) and (o) below and N.J.A.C. 10A:71-3.2;
2. Who has committed a third degree crime shall serve not less than 12 nor more than 16 months except as provided in (f) and (o) below and N.J.A.C. 10A:71-3.2;
3. Who has committed a second degree crime shall serve not less than 16 nor more than 28 months except as provided in (f) and (o) below and N.J.A.C. 10A:71-3.2;
4. Who has committed a first degree crime shall serve not less than 28 nor more than 48 months except as provided in (f) and (o) below and N.J.A.C. 10A:71-3.2;
5. Who has committed the crimes of murder or kidnapping shall serve not less than four years, eight months nor more than eight years, four months except as provided in (f) and (o) below and N.J.A.C. 10A:71-3.2;
6. Upon the second or subsequent revocation of parole for the commission of a crime, 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.

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

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

Rewrote (e).

Amended by R.2010 d.274, effective December 6, 2010.

See: 42 N.J.R. 1296(a), 42 N.J.R. 2960(a).

In (a)3vi, substituted "(e) or (f)" for "(d) or (e)".

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 pursuant to N.J.A.C. 10A:71-2.2; 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.

Amended by R.2012 d.033, effective February 6, 2012.

See: 43 N.J.R. 2144(b), 44 N.J.R. 270(a).

In (b)2, deleted "by the Board" following "confidential" and updated the N.J.A.C. reference.

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.

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

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

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

(h) added.

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

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

Substantially amended.

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

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

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

Recodified from N.J.A.C. 10A:71-7.18 by R.1999 d.252, effective August 2, 1999.

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

Former N.J.A.C. 10A:71-7.19, Withdrawal of parole warrants, recodified to N.J.A.C. 10A:71-7.20.

10A:71-7.19A Adult Diagnostic and Treatment Center examination for sex offenders; place of confinement; future parole eligibility

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

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

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

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

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

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

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

(h) The adult Board panel shall establish a future parole eligibility date pursuant to N.J.A.C. 10A:71-7.17B if the adult

Board panel affirms the revocation of parole and if the report of the examination conducted pursuant to (b), (c) and (d) above reveals that the inmate's violation(s) of the parole conditions:

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

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

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

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

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

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

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

(l) An inmate confined pursuant to (k)1 or 2 above shall be eligible for parole pursuant to the provisions of N.J.S.A. 30:4-123.45 et seq. However, a parole eligibility date established pursuant to N.J.A.C. 10A:71-7.17B or a future parole eligibility date established pursuant to N.J.A.C. 10A:71-3.21 shall not be reduced by commutation time for good behavior pursuant to N.J.S.A. 30:4-140 or credits for diligent application to work and other institutional assignments pursuant to N.J.S.A. 30:4-92.

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

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

New Rule, R.1999 d.189, effective June 7, 1999.
See: 31 N.J.R. 710(a), 31 N.J.R. 1490(a).
Recodified from N.J.A.C. 10A:71-7.18A by R.1999 d.252, effective August 2, 1999.
See: 31 N.J.R. 1140(a), 31 N.J.R. 2218(a).
Amended by R.2002 d.175, effective June 3, 2002.
See: 34 N.J.R. 359(a), 34 N.J.R. 1918(b).
In (h), amended the N.J.A.C. reference.
Amended by R.2010 d.274, effective December 6, 2010.
See: 42 N.J.R. 1296(a), 42 N.J.R. 2960(a).
In (l), updated the first N.J.A.C. reference.

10A:71-7.20 Withdrawal of parole warrants

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

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

Amended by R.1985 d.213, effective May 6, 1985.
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).
Added "N.J.S.A.".
Recodified from N.J.A.C. 10A:71-7.19 by R.1999 d.252, effective August 2, 1999.
See: 31 N.J.R. 1140(a), 31 N.J.R. 2218(a).
Former N.J.A.C. 10A:71-7.20, Revenue cases, recodified to N.J.A.C. 10A:71-7.21.

10A:71-7.21 Revenue cases

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

(b) If a Board panel revokes parole pursuant to (a) above, the Board panel shall determine the length of time to be served; however, the term shall not exceed one day for each \$20.00 of the fine or penalty or restitution, nor 40 days if the

fine or penalty or restitution was imposed upon a disorderly persons offense, nor 25 days if the fine or penalty or restitution was imposed for a petty disorderly persons offense nor one year in any case, whichever is the shorter period.

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

Amended by R.1985 d.213, effective May 6, 1985.
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).
Added (c).
Amended by R.1995 d.109, effective February 21, 1995.
See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).
Recodified from N.J.A.C. 10A:71-7.20 by R.1999 d.252, effective August 2, 1999.
See: 31 N.J.R. 1140(a), 31 N.J.R. 2218(a).

SUBCHAPTER 8. CERTIFICATE OF GOOD CONDUCT

10A:71-8.1 Definition

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

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

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

Amended by R.1985 d.213, effective May 6, 1985.
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).
Substituted "2C:51-2" for "2A:93-5".

10A:71-8.2 Eligibility

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

1. The applicant previously was paroled by the Board.
2. If the applicant is presently on parole, at least one year must have expired since release to parole supervision.
3. The applicant is not presently incarcerated.
4. At least two years have passed since the date any similar application was denied, unless the Board deter-

mines that significant information exists which provides a basis for a waiver of this limitation.

Amended by R.1994 d.273, effective June 6, 1994.
See: 26 N.J.R. 1193(a), 26 N.J.R. 2287(a).

10A:71-8.3 Procedure

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

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

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

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

10A:71-8.4 Criteria

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

10A:71-8.5 Notification

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

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

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

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

10A:71-8.7 Board action

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

SUBCHAPTER 9. CERTIFICATE SUSPENDING CERTAIN EMPLOYMENT, OCCUPATIONAL DISABILITIES OR FORFEITURES

10A:71-9.1 Authorization to issue certificate

(a) A certificate may be issued by the Board in the case of a person who was under parole supervision in accordance

with the provisions of N.J.S.A. 2A:168A-7, which suspends certain disabilities, forfeitures or bars to employment or professional licensure or certification that apply to persons convicted of criminal offenses.

(b) A certificate issued by the Board pursuant to N.J.S.A. 2A:168A-7 shall have the effect of relieving disabilities, forfeitures or bars, except those established or required by Federal law, to:

1. Public employment;
2. Qualification for a license or certification to engage in the practice of a profession, occupation or business, except the practice of law; or
3. Admission to an examination to qualify for such a license or certification, except for the bar examination, or an examination for a law enforcement, homeland security, or emergency management position.

(c) A certificate issued by the Board pursuant to N.J.S.A. 2A:168A-7 may be limited to one or more enumerated disabilities, forfeitures or bars, or may relieve the subject of all disabilities, forfeitures or bars that may be affected by N.J.S.A. 2A:168A-7.

10A:71-9.2 Definitions

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

"Public employment" shall mean employment by a State, county, or municipal agency, but shall not include elected office, or employment in law enforcement, corrections, the judiciary, in a position related to homeland security or emergency management, or any position that has access to sensitive information that could threaten the public health, welfare, or safety.

"Qualified offender" refers to a person who has one criminal conviction or who has convictions for more than one crime charged in separate counts of one indictment or accusation. Multiple convictions charged in two indictments or two accusations, or one indictment and one accusation filed in the same court prior to entry of judgment under any of them, shall be deemed to be one conviction. Convictions of crimes entered more than 10 years prior to an application for a certificate under N.J.S.A. 2A:168A-7 shall not be considered in determining whether a person has one criminal conviction.

10A:71-9.3 Eligibility

(a) A certificate may be issued by the Board pursuant to N.J.S.A. 2A:168A-7 in regard to a qualified offender who is, or had previously been, under supervision by the Board if the Board determines pursuant to N.J.S.A. 2A:168A-8(b) that:

1. The applicant is convicted of a second, third or fourth degree offense and is eligible for relief as defined in (b) below;

2. The applicant has not been convicted of a crime since the conviction for which he or she is under supervision, has no pending criminal charge, and there is no information presented that such a charge is imminent;

3. Issuing the certificate will not pose a substantial risk to public safety; and

4. Issuing the certificate will assist in the successful reintegration of the offender and is consistent with the public interest.

(b) Pursuant to N.J.S.A. 2A:168A-8(c), a qualified offender is eligible for relief under (a) above if the offender has not been convicted of:

1. A first degree crime;
2. An offense to which N.J.S.A. 2C:43-7.2 applies;
3. A second degree offense defined in Chapters 13, 14, 15, 16, 24, 27, 30, 33 or 38 of Title 2C of the New Jersey Statutes;
4. A violation of N.J.S.A. 2C:24-4a. or N.J.S.A. 2C:24-4b.(4);
5. A crime requiring registration pursuant to N.J.S.A. 2C:7-2;
6. A crime committed against a public entity or against a public officer;
7. A crime enumerated in N.J.S.A. 43:1-3.1, committed by a public employee, which involves or touches upon the employee's office, position or employment, such that the crime was related directly to the person's performance in, or circumstances flowing from, the specific public office or employment held by the person;
8. Any crime committed against a person 16 years of age or younger, or a disabled or handicapped person; or
9. A conspiracy or attempt to commit any of the crimes described in this subsection.

(c) The Board may issue a certificate in regard to a qualified offender, when three years have passed since the applicant has completed the parole supervision portion of his or her sentence and the Board determines pursuant to N.J.S.A. 2A:168A-8(d) that:

1. The applicant is eligible for relief as defined in (d) below;
2. Issuing the certificate does not pose a substantial risk to public safety; and
3. Issuing the certificate will assist in the successful reintegration of the offender and is consistent with the public interest.

(d) Pursuant to N.J.S.A. 2A:168A-8(e), a qualified offender is eligible for relief under (c) above if he or she has remained without criminal involvement since his or her conviction, including that he or she has not subsequently been

convicted of a crime, has no pending charges for any crime and there is no information presented that such a charge is imminent; and is applying for relief from a conviction other than:

1. A first degree crime;
2. Any of the offenses to which N.J.S.A. 2C:43-7.2 applies;
3. A violation of N.J.S.A. 2C:24-4a. or N.J.S.A. 2C:24-4b.(4);
4. A crime requiring registration pursuant to N.J.S.A. 2C:7-2;
5. A crime enumerated in N.J.S.A. 43:1-3.1, committed by a public employee, which involves or touches upon the employee's office, position or employment, such that the crime was related directly to the person's performance in, or circumstances flowing from, the specific public office or employment held by the person;
6. A crime committed against a person 16 years of age or younger, or a disabled or handicapped person; or
7. A conspiracy or attempt to commit any offense described in this subsection.

(e) The certificate issued pursuant to (a) or (c) above may suspend disabilities, forfeitures and bars generally within the limits of N.J.S.A. 2A:168A-7 et seq., or only certain disabilities, forfeitures and bars specifically named in the certificate document issued by the Board.

Amended by R.2010 d.274, effective December 6, 2010.
See: 42 N.J.R. 1296(a), 42 N.J.R. 2960(a).

In the introductory paragraph of (d), deleted a comma following the second occurrence of "crime"; and in (d)5, updated the N.J.S.A. reference.

10A:71-9.4 Presumption of rehabilitation

Pursuant to N.J.S.A. 2A:168A-9, a certificate issued pursuant to N.J.S.A. 2A:168A-7 shall be presumptive evidence of the subject's rehabilitation when considered in regard to public employment as defined in N.J.S.A. 2A:168A-7 and N.J.A.C. 10A:71-9.2, or in conjunction with any licensing, or certification process to which this act applies, which in any particular case may or may not be overcome by other evidence or information. A certificate granted under N.J.S.A. 2A:168A-7 shall not prevent any judicial, administrative, licensing or other body, board, authority or public official from relying on grounds other than the fact of the criminal conviction in exercising any discretionary authority, if any, to suspend, revoke, refuse to issue or refuse to renew any license, permit or other authority or privilege or to determine eligibility or suitability for employment.

10A:71-9.5 Procedure

(a) The applicant shall apply to the Board for a certificate on forms prescribed and furnished by the Board.

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

(c) The applicant shall be required to furnish all documentary evidence required by the Board.

10A:71-9.6 Notification

(a) The Board shall provide written notice to the appropriate prosecutor of the pendency of an application submitted pursuant to this subchapter within 30 days of receipt of the application.

(b) The Board shall provide written notice to the appropriate prosecutor of the decision rendered by the Board on an application submitted pursuant to this subchapter within 30 days of the date of the decision.

(c) The Board shall provide written notice to the applicant of its decision within 30 days of the date of the decision.

(d) The original copy of the certificate, if granted, shall be filed with the Secretary of State.

(e) A copy of the certificate, if granted, shall be provided to the applicant.

(f) The certificate document provided to the applicant shall include a statement that the document is a copy and that a certifying authority, licensing authority or public employer should confirm with the Secretary of State that the certificate remains valid.

(g) If the Board should revoke a certificate pursuant to N.J.A.C. 10A:71-9.7, the Board shall provide written notice to the person who is the subject of the certificate, the appropriate prosecutor, the Secretary of State, the appropriate certifying authority, licensing authority or public employer within 15 days of the date of decision.

10A:71-9.7 Revocation of certificate

(a) In accordance with N.J.S.A. 2A:168A-11, a certificate granted pursuant to N.J.S.A. 2A:168A-7 shall no longer be

valid if the person who is the subject of the certificate is indicted for a first or second degree crime or convicted of a crime.

(b) Upon presentation of satisfactory proof that the criminal charges or indictment have been dismissed, or of an acquittal after trial, a certificate revoked under the circumstances described in (a) above may be reinstated by the Board.

(c) A certificate may be revoked at any time upon application of the prosecutor or on the Board's own initiative when information is received that circumstances have materially changed, such that the relief would not be authorized under N.J.S.A. 2A:168A-7 et seq., or is no longer in the public interest.

(d) A person who is the subject of a certificate shall be provided written notice prior to the Board rendering a decision to revoke the certificate. The person who is the subject of the certificate may provide a written statement for consideration by the Board as to why the certificate should not be revoked. The written statement must be received by the Board within 21 days of the person who is the subject of a certificate receiving the Board's notice. If a written statement is not received within the specified time period, the Board may proceed to consider the matter.

(e) The notice provided pursuant to (d) above shall not be required if the basis for revocation of the certificate is an indictment for a first or second degree crime or the conviction for the commission of a crime.

(f) Upon notice of the decision by the Board to revoke a certificate, the person who is the subject of the certificate shall surrender the certificate to the Board.

10A:71-9.8 Board action

A decision by the Board to grant or revoke a certificate shall be rendered pursuant to N.J.A.C. 10A:71-1.2(h) and (i).