

## CHAPTER 71

### PAROLE

#### Authority

N.J.S.A. 30:4-123.47 (a) and (d) and 30:4-123.48(d).

#### Source and Effective Date

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

#### Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 71, Parole, expires on July 6, 2005. See: 36 N.J.R. 4407(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: Source and Effective Date. See, also, section annotations.

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## SUBCHAPTER 1. BOARD ORGANIZATION

### 10A:71-1.1 Definitions

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

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

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

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

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

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

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

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

“County inmate” shall mean an inmate who is:

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

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

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

“District parole supervisor” shall mean any district parole supervisor in the Division of Parole of the New Jersey State Parole Board.

"Division of Parole" shall mean the unit within the State Parole Board responsible for the supervision of adult offenders released on parole by the State Parole Board; the supervision of parolees from other states who have been accepted under the terms of the Adult and Juvenile Compacts for the Supervision of Parolees and Probationers; the supervision and/or monitoring of inmates assigned to the Electronic Monitoring Program and Furlough Program; the supervision of offenders sentenced to community supervision for life; the supervision of offenders sentenced to a period of mandatory parole supervision; the supervision of certain Executive Clemency cases; and the supervision of any other inmate participating in a community program such as the Work Release Program.

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

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

"Office of Interstate Services" shall mean the unit within the Division of Parole of the State Parole Board responsible for processing and monitoring applications for and performing duties related to the transfer of parole supervision of a parolee to an out-of-State jurisdiction.

"Parole officer" shall mean, with respect to an adult inmate, an officer assigned by the Chairperson of the State Parole Board or his or her designee and, with respect to a juvenile inmate, a person assigned by the Commission.

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

"Prosecutor" shall mean the county prosecutor of the county in which the defendant was convicted unless the matter was prosecuted by the Attorney General, in which case "prosecutor" shall mean the Attorney General.

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

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

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

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

Administrative correction, effective January 27, 1989.

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

Institutional name change.

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

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

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

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

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

Added "Division of Parole", "Office of Interstate Services" and "Prosecutor"; in "District Parole Supervisor", substituted "Division of Parole of the New Jersey State Parole Board" for "Bureau of Parole of the New Jersey Department of Corrections"; in "Parole officer", substituted "Chairperson of the State Parole Board or his or her designee" for "Bureau of Parole".

## 10A:71-1.2 Board meetings

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

At (h), changed from four to five Board members.  
Amended by R.1995 d.109, effective February 21, 1995.  
See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).  
Amended by R.1997 d.168, effective April 7, 1997.  
See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (a)1, inserted reference to Commission; in (a)2, inserted reference to Commission's representatives.  
Amended by R.2001 d.271, effective August 6, 2001.

See: 33 N.J.R. 1044(a), 33 N.J.R. 2672(a).  
In (e), substituted "a majority of the" for "at least five"; in (h), substituted "a majority of the" for "five".

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

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

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

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

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

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

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

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

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

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

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

Section substantially amended.

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

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

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

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

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

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

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

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

### 10A:71-1.4 Board membership

(a) The Board shall consist of a Chairperson, 14 associate members and three alternate Board members. Members of the board and the alternate board members shall be appointed by the Governor with the advice and consent of the Senate from qualified persons with training or experience in law, sociology, criminal justice, juvenile justice or related branches of the social sciences. Members shall serve until their successors are appointed and have qualified.

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

(c) An alternate Board member may assume the duties of an associate member when the associate member is absent, unavailable or otherwise unable to perform his or her duties, or the associate member assumes the duties of the Chairperson, and shall perform those duties only until the associate assumes his or her duties or, in the case of removal or a permanent incapacity, the qualification of a successor appointed by the Governor.

(d) Any vacancy occurring in the membership of the Board, otherwise than by expiration of term, shall be filled in the same manner as one occurring by expiration of term, but for the unexpired term only. Any member of the Board, including any alternate Board member, may be removed from office by the Governor for cause.

(e) Upon certification of the Chairperson that additional parole panels are needed on a temporary basis for the efficient processing of parole decisions, the Governor also may appoint not more than four temporary acting parole Board members from qualified persons with training or experience in law, sociology, criminal justice, juvenile justice or related branches of the social sciences. A temporary acting member shall be appointed for a term of three months. The Governor may extend the appointment of any or all of the temporary acting members for additional terms of three months, upon certification of the Chairperson that additional parole panels are needed on a temporary basis for the efficient processing of parole decisions. A temporary acting member shall be authorized to participate in administrative review of initial parole hearing decisions, parole consideration hearings, and determinations concerning revocation or rescission of parole.

(f) At the time of appointment, the Governor shall designate two associate members of the Board to serve on a panel on juvenile commitments. The remaining 12 associate members of the Board shall be appointed by the Governor to panels on adult sentences. The Chairperson of the Board shall assign the 12 associate members so appointed to six panels on adult sentences. The Chairperson of the Board shall be a member of each panel. Nothing provided herein shall prohibit the Chairperson from reassigning any member appointed to a panel on adult sentences to facilitate the efficient function of the Board. Further, nothing provided herein shall prohibit the Chairperson from temporarily reassigning any member appointed to a panel on juvenile commitments to a panel on adult sentences or a panel on young adult sentences to facilitate the efficient function of the Board. An alternate Board member may assume, in accordance with the provisions of this section, the duties of any associate member, regardless of whether that associate member serves on a panel on juvenile commitments or panels on adult sentences. The Chairperson may assign a temporary acting member to a panel on adult sentences or juvenile commitments.

(g) When a vacancy on the Board exists which has not been filled by the Governor, the membership of the Board

and Board panel shall be deemed to be the existing members of the Board and Board panel, respectively.

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

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

Rewrote the section.

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

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

In (a), increased the number of associate members from eight to ten; in (c), substituted "may" for "shall" following "Board member", and substituted "when the associate member is absent or otherwise unable to perform his or her duties" for "only when the associate member is removed, incapacitated" following "associate member"; and in (e), substituted a reference to eight associate members for a reference to six associate members in the second sentence, substituted a reference to six associate members for a reference to four associate members and substituted a reference to three panels for a reference to two panels in the third sentence, and inserted a new sixth sentence.

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

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

Rewrote the section.

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

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

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

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

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

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

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

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

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

Subsections (e) and (f) added.

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

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

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

Amended by R.1998 d.391, effective August 3, 1998.  
See: 30 N.J.R. 1176(a), 30 N.J.R. 2920(a).  
Inserted a reference to vice-chairpersons.

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

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

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

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

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

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

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

(a) As provided by law, the Board shall publish a yearly report detailing the operations, organization and procedures of the Board. The report also may include relevant information on compliance with established time frames in the processing of parole eligibility determinations, the effectiveness of any pertinent legislative or administrative measures, and any recommendations to enhance Board operations or to effectuate the purposes of the Parole Act of 1979, P.L. 1979, c. 441 (N.J.S.A. 30:4-123.45 et seq.).

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

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

(b) Substantially amended.  
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).

#### 10A:71-1.10 Public notice regarding proposed rulemaking

(a) The Board shall provide for the following public notice for all rulemaking activity in accordance with N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:30.

1. The notice of rule proposal shall be filed with the Office of Administrative Law for publication in the New Jersey Register;

2. The notice of the rule proposal as filed or a statement of the substance of the proposed rulemaking shall be posted and made available electronically on the Board's Internet web site at [www.state.nj.us/parole](http://www.state.nj.us/parole);

3. The notice of rule proposal as filed or a statement of the substance of the proposed action shall be provided to the following:

i. Any person who has made a timely request of the Board for notice of its rulemaking activity;

ii. News media maintaining a press office in the State House Complex;

iii. A distribution list which shall include, but not be limited to, the Office of the Governor, the Commissioner, the Juvenile Justice Commission, the Department of Law and Public Safety, County Prosecutors, the Office of the Public Defender, Boards of Trustees of the adult, young adult and juvenile correctional complexes, the Chief Executive Officers of State and county correctional facilities, victim advocacy groups, the American Civil Liberties Union of New Jersey, the New Jersey Association of Corrections and inmate advocacy groups; and

iv. Known, organized entities or parties that may be the subject of or significantly related to the proposed rulemaking.

(b) The Board shall also have public notice of all rulemaking activity posted in a public area in all regional district parole offices and in the law library or related area in each State and county correctional facility.

(c) The notice of rule proposal required pursuant to (a)2 and 3 and (b) above shall be provided at least 30 days prior to the close of the public comment period.

New Rule, R.2002 d.175, effective June 3, 2002.  
See: 34 N.J.R. 359(a), 34 N.J.R. 1918(b).

#### 10A:71-1.11 Additional opportunity to be heard upon showing of sufficient public interest

(a) The Board, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 1:30, Office of Administrative Law Rules for Agency Rulemaking, may extend the time for the submission of public comments on a proposed rulemaking, at its discretion, without the need for a specific request or demonstration of sufficient public interest.

(k) The Board panel may vacate any reduction granted if the inmate fails to maintain acceptable conduct.

(l) The young adult and juvenile Board panels consider exceptional progress of young adult and juvenile inmates respectively at the time of reviews conducted pursuant to N.J.A.C. 10A:71-3.3(g), 3.25, 3.27 and 3.32.

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

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

Section substantially amended.

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

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

Corrected internal N.J.A.C. cites at (l).

#### Case Notes

Alleged denial of due process by parole board's failure to consider application for exceptional progress could proceed; section 1983. *Johnson v. Fauver*, D.N.J.1992, 786 F.Supp. 442, affirmed 970 F.2d 899.

Alleged denial of due process by failure to consider application for exceptional progress; moot. *Johnson v. Fauver*, D.N.J.1992, 786 F.Supp. 442, affirmed 970 F.2d 899.

Parole reduction agreement provision of the Parole Act examined; no due process violation found in discretion accorded the Parole Board; regulation presumptively valid. *Raymond v. N.J. State Parole Bd.*, 221 N.J.Super 381, 534 A.2d 741 (App.Div.1987).

#### 10A:71-3.6 Notice of parole eligibility; adult inmates

(a) Upon the admission of an adult inmate to a State correctional facility, it shall be the responsibility of the chief executive officer of such facility to promptly notify the Board.

(b) Upon such notification and within 90 days of the commencement of the sentence, the Board shall notify the inmate in writing of his or her primary parole eligibility date.

(c) Each inmate shall be given the opportunity to acknowledge in writing the receipt of such notice. Failure by the inmate to acknowledge the receipt of such notice shall be recorded in the Board's files.

(d) The Board shall annually monitor the progress of each adult inmate and provide the inmate and the Department with a written statement of any changes in the inmate's parole eligibility.

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

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

#### 10A:71-3.7 Preparation of cases for parole hearings; adult inmates

(a) Five to seven months in advance of the actual eligibility date, the Board shall promulgate a list of those adult inmates who appear to be eligible for parole consideration.

(b) This list shall be distributed to the chief executive officer of the institution of incarceration, the Chairman of the Board of Trustees for the institution of incarceration and to the Division of Parole.

(c) The receipt of this eligibility list by the chief executive officer of the institution of incarceration and by the Division of Parole shall be notice to initiate the preparation of a pre-parole report pursuant to (e) below.

(d) It shall be the responsibility of the chief executive officer to file a report concerning the inmate with the appropriate Board panel and the Division of Parole within 60 days of the receipt of the Board's list. In the case of an inmate identified by the Board's staff as being past eligible for parole consideration or an inmate who has an accelerated parole eligibility date pursuant to N.J.A.C. 10A:71-3.18A, the chief executive officer shall file the report on the inmate with the appropriate Board panel within 30 days of receipt of notice that the inmate is past eligible for parole consideration or has an accelerated parole eligibility date. If the report is not filed within the aforementioned 30 or 60 day time periods, the chief executive officer shall state the reasons therefor in writing and provide such statement in the report when the report is filed with the appropriate Board panel.

(e) Such report shall consist of the following information:

1. The commitment order, including the sentencing court's written reasons for any sentence imposed.
2. The pre-sentence report.
3. A report on the conduct of the inmate during incarceration.
4. A complete report on the inmate's social, physical and mental condition, including any psychological or psychiatric reports requested by the Board and reports of the inmate's institutional housing, work, education and program participation.
5. An investigative report by the Division of Parole on the inmate's parole plans.
6. Any other information reflecting on the likelihood that the inmate will commit a crime if paroled.
7. An investigation of any outstanding detainers.
8. The inmate's actual maximum date based on current credits.
9. In the case of an inmate serving a specific term or life term, the projected work and minimum custody credit pattern as established by the classification department.
10. An itemized account of the assessment, penalty, lab fee, fine and restitution amounts imposed by the sentencing court and the balance owed by the inmate on the respective monetary obligation.
11. Any history of civil commitment.
12. Any disposition which arose out of any charges suspended pursuant to N.J.S.A. 2C:4-6 including records of the disposition of those charges.



13. Any acquittals by reason of insanity pursuant to N.J.S.A. 2C:4-1.

14. Any psychological reports prepared in connection with any court proceedings.

(f) Upon the recommendation of the Special Classification Review Board pursuant to N.J.S.A. 2C:47-5 and the expiration of any mandatory minimum term, the chief executive officer of the Adult Diagnostic and Treatment Center shall file a report concerning the inmate with the adult Board panel. In addition to the information required pursuant to (e) above, the report shall include:

1. The treatment record of the inmate and the comments, evaluations and recommendations of the inmate's therapist(s);

2. The comments, evaluations and recommendations of treatment staff;

3. The comments, evaluations and recommendations of the chief executive officer;

4. The comments, evaluation and recommendations of the members of the Special Classification Review Board;

5. All information reviewed and considered by the Special Classification Review Board;

6. A statement from the Special Classification Review Board as to the inmate's capability of making an acceptable social adjustment in the community;

7. The name, title and agency affiliation of the members of the Special Classification Review Board participating in the evaluation of the inmate's case for referral to the Board for parole consideration;

8. In the case of an inmate recommended to the Board for parole consideration by three members of the Special Classification Review Board, the comments and concerns of any member of the Special Classification Review Board who dissents in the determination to recommend the inmate's case to the Board for parole consideration.

(g) In addition to the information required pursuant to (e) above, the report shall, pursuant to N.J.S.A. 30:4-123.54(b)1, include an in-depth psychological evaluation of the inmate in any case in which the inmate was convicted of a first or second degree crime involving violence and:

1. The inmate has a prior acquittal by reason of insanity pursuant to N.J.S.A. 2C:4-1 or had charges suspended pursuant to N.J.S.A. 2C:4-6; or

2. The inmate has a prior conviction for murder pursuant to N.J.S.A. 2C:11-3, aggravated sexual assault or sexual assault pursuant to N.J.S.A. 2C:14-2, kidnapping pursuant to N.J.S.A. 2C:13-1, endangering the welfare of a child which would constitute a crime of the second degree pursuant to N.J.S.A. 2C:24-4, or stalking which would constitute a crime of the third degree pursuant to N.J.S.A. 2C:12-10; or

3. The inmate has a prior diagnosis of psychosis.

(h) In addition to any psychological or psychiatric evaluation report(s) submitted pursuant to (e) above, a Board panel or the Board may require the Department to perform a supplemental evaluation of an in-depth nature of the inmate.

(i) At any time while an inmate is committed to the custody of the Commissioner, the appropriate Board panel or the Board may require, as often as it deems necessary, the inmate to undergo an in-depth pre-parole psychological evaluation conducted by a psychologist.

(j) An inmate may submit to the Board panel or Board any evaluation report prepared in his case by a private psychologist or psychiatrist. The expense for the conducting of such an evaluation shall be the complete responsibility of the inmate. Arrangements for the scheduling of such an evaluation shall be made through the Department and shall be in accordance with Department regulations. If an inmate submits an evaluation report pursuant to this section, the inmate shall be required, upon the request of the Board panel or Board, to produce at his or her expense the examining psychologist or psychiatrist for an interview before the Board panel or Board.

(k) Prior to the parole eligibility date of an adult inmate, an objective risk assessment shall be performed by Board staff or by some other appropriate agent of the State. The risk assessment shall consist of both static and dynamic factors which may assist the Board panel or Board in determining whether the inmate shall be certified for parole and, if paroled, the level of supervision the inmate may require. In addition to the information otherwise gathered for and incorporated in the pre-parole report pursuant to (e) and (f) above, the assessment shall include, but not be limited to, evaluations of the inmate's ability to function independently, the inmate's educational and employment background and the inmate's family and marital history.

(l) It shall be the responsibility of the chief executive officer to produce the institutional classification file at all scheduled case reviews and initial parole, Board panel and Board hearings.

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

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

Section substantially amended.

Amended by R.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 (e), added 11 through 14; rewrote (g); inserted a new (i); recodified former (i) as (j); and added (k) and (l).

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

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

Rewrote (d) and (i); in (k), inserted "or by some other appropriate agent of the State" at the end of the first sentence; substituted "Division of Parole" for "Bureau of Parole" throughout.



**Case Notes**

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

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

**10A:71-3.8 Public notice; adult inmates**

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

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

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

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

(b) added.

**Case Notes**

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

**10A:71-3.9 Inmate statements; adult inmates**

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

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

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

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

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

Cross reference changed.

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

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

N.J.A.C. cite changed in (c).

**Case Notes**

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

**10A:71-3.10 Purpose of parole hearing; adult inmates**

(a) In the case of an inmate serving a sentence for an offense committed prior to August 19, 1997, the Board panel shall determine whether evidence supplied in reports or developed or produced at the hearing indicates by a preponderance of the evidence that there is a substantial likelihood that the inmate will commit a crime under the laws of the State of New Jersey if released on parole.

(b) In the case of an inmate serving a sentence for an offense committed on or after August 19, 1997, the Board panel shall determine whether evidence supplied in reports or developed or produced at the hearing indicates by a preponderance of the evidence that the inmate has failed to cooperate in his or her own rehabilitation or that there is a reasonable expectation that the inmate will violate conditions of parole established pursuant to N.J.A.C. 10A:71-6.4(a) if released on parole. Failure to cooperate in his or her own rehabilitation shall include, in the case of an inmate who suffers from mental illness as defined in N.J.S.A. 30:4-27.2 that does not require institutionalization, that the inmate failed to fully participate in or cooperate with all prescribed treatment offered during incarceration.

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

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

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

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

(f) An offender sentenced in accordance with N.J.S.A. 2C:47-1 et seq. who is female and who is confined in a facility designated by the Commissioner pursuant to N.J.S.A. 30:4-91.2 shall be subject to the same rules as an offender sentenced in accordance with N.J.S.A. 2C:47-1 et seq. who is male. All references in this chapter to the Adult Diagnostic and Treatment Center shall be deemed, when applied to a female sentenced in accordance with N.J.S.A. 2C:47-1 et seq., to refer to the sex offender treatment program at the facility designated by the Commissioner.

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

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

(c) substantially amended. (d) added.

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

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

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

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

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

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

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

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

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

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

In (b), added the last sentence.

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).

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

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

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

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

5. Facts and circumstances of the offense.

6. Aggravating and mitigating factors surrounding the offense.

7. Pattern of less serious disciplinary infractions.

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

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

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

11. Documented changes in attitude toward self or others.

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

13. Mental and emotional health.

14. Parole plans and the investigation thereof.

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

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

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

18. History of employment, education and military service.

19. Family and marital history.

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

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

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

23. The results of the objective risk assessment instrument.

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

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

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

(b) 21 and 22 added.

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

See: 30 N.J.R. 1176(a), 30 N.J.R. 2920(a).  
 In (b), added 23.  
 Administrative correction.  
 See: 31 N.J.R. 1816(a).

#### Case Notes

State parole board's failure, in denying parole to inmate serving term of life imprisonment for first-degree murder, to address all 27 factors enumerated in applicable Department of Corrections regulation did not, by itself, amount to application of incorrect standard in determining whether there was a substantial likelihood that inmate would commit a crime if released on parole. *McGowan v. NJ State Parole Bd.*, 347 N.J.Super. 544, 790 A.2d 974.

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

The prosecutor has the right to appeal any Parole Board decision granting parole to a state prison inmate: Board is not required to provide the prosecutor with a statement of reasons for release decision, but should do so in the public interest in those cases in which the prosecutor has participated in the parole eligibility hearing (cited as N.J.A.C. 10A:71-2.11). In *re Hawley*, 98 N.J. 108, 484 A.2d 684 (1984), affirmed 101 N.J. 36, 486 A.2d 339.

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

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

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

(b) If a mental competency examination has certified that the inmate is unable to understand the nature of the parole proceedings, the Board or an interested party may begin proceedings before the relevant court for appointment of a guardian ad litem for the inmate, who may appear before the Board on behalf of the inmate.

#### 10A:71-3.13 Parole hearing procedures; adult inmates

(a) The parole hearing shall be informal.

(b) Parole hearings on a scheduled hearing date shall commence at 9:00 A.M. unless otherwise agreed to by the Board panel members.

(c) The hearing officer, Board panel or Board shall receive as evidence any relevant and reliable documents or testimony.

(d) All such evidence not classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or the rules and regulations of the Department shall be disclosed to the inmate.

(e) The inmate shall have the right to rebut any evidence and shall have the right to present evidence on his or her own behalf.

(f) The inmate shall have the right to be aided by an interpreter, if such aid is determined to be necessary by the hearing officer, Board panel or Board.

(g) The inmate shall have the right to be aided by a Board representative pursuant to N.J.A.C. 10A:71-2.5.

(h) The inmate shall disclose any information concerning any history of civil commitment.

(i) The inmate shall have the right to request, in writing, a postponement of the hearing at any time, and the hearing officer or Board panel may grant such request. However, such postponement shall not be deemed a waiver of the time limits contained in this subchapter unless authorized pursuant to N.J.A.C. 10A:71-3.50.

(j) The decision of the hearing officer, Board panel or Board shall be based solely on the evidence presented at the hearing.

(k) The hearing officer or presiding Board member shall record the 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 for the next available hearing date.

(l) The Board shall adopt a professional code of conduct and parole hearings shall be conducted in accordance with the professional code of conduct.

(m) A parole hearing may be conducted by videoconferencing. A record of the hearing shall be made pursuant to (k) above.

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

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

(g) 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).

Reference to full Board added throughout.

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).

Inserted a new (h); and recodified former (h) through (k) as (i) through (l).

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

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

Added (m).

#### Case Notes

Failure by parole board to consider written reports of mental health professionals constituted procedural error. *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:71-3.14 Scheduling of case review and initial parole hearing; adult inmates**

(a) Upon the Board panel's receipt of the reports required pursuant to N.J.A.C. 10A:71-3.7, the Chairperson shall establish a schedule of case reviews and parole hearings to be conducted by a hearing officer assigned by the Chairperson.

(b) Except as provided in N.J.A.C. 10A:71-3.51, such case reviews and hearings shall be conducted at least 60 days or as soon as practicable in advance of the inmate's actual parole eligibility date.

(c) The Chairperson, when practicable, shall notify the chief executive officer of the schedule of such case reviews and hearings, including those to be conducted by videoconferencing, at least seven days prior to the hearings.

(d) It shall be the responsibility of the chief executive officer to immediately notify the Chairperson if any inmate scheduled for a hearing is transferred from the institution or is not expected to be available for any reason.

(e) It shall be the responsibility of the chief executive officer to make arrangements to have any inmate scheduled for a parole hearing brought to the hearing, unless such inmate is physically unable to appear or refuses to appear for the hearing.

(f) It shall be the responsibility of the chief executive officer to notify the assigned hearing officer, in writing, of the reason for the failure of an inmate to appear at a scheduled parole hearing.

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

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

(f) added.

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

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

In (b) changed N.J.A.C. cite.

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

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

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

In (c), inserted "including those to be conducted by videoconferencing".

**10A:71-3.15 Initial hearing and case review notice of decision; adult inmates**

(a) At the conclusion of the parole hearing or case review, the hearing officer shall:

1. Recommend, except as provided in (b) below, to the members of the appropriate Board panel that the inmate be released on parole; or

2. Refer the case to the appropriate Board panel for a hearing; or

3. Defer decision for up to 45 days in order to obtain relevant information.

(b) In the case of an offender serving a term for the crime of murder, aggravated manslaughter, manslaughter, death by vehicular homicide, aggravated assault second degree, kidnapping, aggravated sexual assault, sexual assault, robbery, aggravated arson, burglary second degree, endangering the welfare of a child second degree or causing or risking widespread injury or damage second degree, the hearing officer shall refer the case for a hearing before the appropriate Board panel.

(c) At the time of the hearing or case review, the hearing officer shall issue a written assessment to the inmate, the Department and the Board panel.

(d) Such case assessment shall consist of the hearing officer's determination and the reasons therefor, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or the rules and regulations of the Department.

(e) If the hearing officer recommends that the inmate be released on parole, the hearing officer shall advise the inmate at the time of the hearing or upon resolution of any deferred decision of any special parole conditions recommended.

Amended by R.1994 d.510, effective October 17, 1994.

See: 26 N.J.R. 2189(a), 26 N.J.R. 4190(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), inserted a reference to death by vehicular homicide.

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)1, substituted "the members" for "a member".

**10A:71-3.16 Board member review; adult inmates**

(a) When the hearing officer recommends that an inmate be released on parole, the Chairperson shall assign two members of the appropriate Board panel to review such recommendation.

(b) If the assigned Board members concur with the recommendation of the hearing officer, the members shall certify parole release as soon as practicable after the parole eligibility date by:

1. Establishing a parole release date based upon the inmate's projected parole eligibility date; or

2. Establishing a specific parole release date; and

3. Establishing appropriate pre-release conditions; and

4. Establishing appropriate special parole conditions pursuant to N.J.A.C. 10A:71-6; and

5. Issuing a written decision within 21 days of the Board members' action to the inmate, the Department, the Board and the Prosecutor for the county from which the inmate was committed.

(c) If a parole release date has been established based upon a projected parole eligibility date, the chief executive officer of the institution or designee shall:

1. Notify the senior Board representative at the institution immediately upon an acceleration in the credit pattern. If an acceleration in the credit pattern has occurred then:

i. The parole eligibility date shall be recalculated;

(b) The Board shall, within 21 days of receiving notice that an event or circumstance occurred which results in an accelerated parole eligibility date, provide notice pursuant to N.J.A.C. 10A:71-3.8 of the inmate's eligibility for parole consideration and provide notice pursuant to N.J.A.C. 10A:71-3.7 to the chief executive officer of the institution of incarceration to initiate the preparation of a pre-parole report. The notice to the chief executive officer shall include the accelerated parole eligibility date of the inmate.

(c) It shall be the responsibility of the chief executive officer of the institution to file a report concerning an inmate with an accelerated parole eligibility date with the appropriate Board panel within 30 days of receipt of the notice provided pursuant to (b) above. If the report is not filed within the 30 day time period, the chief executive officer shall state the reasons therefor in writing and provide such statement in the report when the report is filed.

(d) Upon the receipt of a pre-parole report required pursuant to N.J.A.C. 10A:71-3.7 and upon confirmation by the Board staff that the pre-parole report is complete, the Chairperson shall have a case review or initial parole hearing, as appropriate, scheduled to be conducted by a hearing officer. Such case review or initial parole hearing shall be conducted within 14 days of a complete pre-parole report being received.

(e) If at the conclusion of the case review or initial parole hearing the hearing officer recommends that the inmate be released on parole, the review of the recommendation as required by N.J.A.C. 10A:71-3.16 shall occur within 14 days of the date of the case review or initial parole hearing.

(f) If at the conclusion of the case review or initial parole hearing the hearing officer refers the case to the appropriate Board panel or if the Board members upon review of the recommendation by the hearing officer that the inmate be released on parole do not concur with the recommendation of the hearing officer, the Chairperson shall have a Board panel hearing scheduled to be conducted within 14 days of the date of the case review or initial parole hearing or within 14 days of the date the Board members did not concur in the recommendation of parole release, as appropriate.

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

(h) A Board panel hearing shall be held not more than 120 days from the date the Board received notice that an event or circumstance occurred which results in an accelerated parole eligibility date.

New Rule, R.2002 d.175, effective June 3, 2002.  
See: 34 N.J.R. 359(a), 34 N.J.R. 1918(b).

#### **10A:71-3.19 Board hearing; scheduling for adult inmates**

(a) A case referred to the Board by a Board panel pursuant to N.J.A.C. 10A:71-3.18(c) shall be scheduled by the Chairperson for a hearing by the Board.

(b) Such hearing shall be conducted at least 30 days or as soon as practicable in advance of the inmate's actual parole eligibility date.

(c) The Chairperson, when practicable, shall notify the chief executive officer of the institution, appropriate Department personnel and the inmate of the date of the hearing at least seven days prior to the hearing.

(d) It shall be the responsibility of the chief executive officer of the institution and appropriate Department personnel to make the necessary arrangements to have the inmate present at the New Jersey State Prison on the hearing date.

(e) It shall be the responsibility of the chief executive officer of the institution to immediately notify the Chairperson if the inmate is unavailable, for any reason, to attend the hearing.

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

#### **Case Notes**

Rule permits a lengthy future eligibility term to be set where the presumptive term would be clearly inappropriate for the circumstances of the offense, the history of the offender and his institutional behavior; imposition of such a term on prisoner serving term prior to rule's adoption not an ex post facto application of parole rules. *Thompson v. New Jersey State Parole Bd.*, 210 N.J.Super. 107, 509 A.2d 241 (App. Div.1986).

#### **10A:71-3.20 Board hearing; notice of decision for adult inmates**

(a) At the conclusion of the Board hearing, the Board shall take one of the actions as specified in N.J.A.C. 10A:71-3.18(a).

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

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

parole affirmed or whether the inmate should be denied parole.

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

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

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

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

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

1. Except as provided herein, a prison inmate serving a sentence for murder, manslaughter, aggravated sexual assault or kidnapping or serving any minimum-maximum or specific sentence in excess of 14 years for a crime not otherwise assigned pursuant to this section shall serve 27 additional months.

2. Except as provided herein, a prison inmate serving a sentence for armed robbery or robbery or serving any minimum-maximum or specific sentence between eight and 14 years for a crime not otherwise assigned pursuant to this section shall serve 23 additional months.

3. Except as provided herein, a prison inmate serving a sentence for burglary, narcotic law violations, theft, arson or aggravated assault or serving any minimum-maximum or specific sentence of at least four but less than eight years for a crime not otherwise assigned pursuant to this section shall serve 20 additional months.

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

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

1. Except as provided herein, a young adult inmate serving a sentence for a crime contained in Categories A or B of N.J.A.C. 10A:71-3.3 shall serve 24 additional months.

2. Except as provided herein, a young adult inmate serving a sentence for a crime contained in Category C of N.J.A.C. 10A:71-3.3 shall serve 20 additional months.

3. Except as provided herein, a young adult inmate serving a sentence for a crime contained in Category D of N.J.A.C. 10A:71-3.3 shall serve 16 additional months.

4. Except as provided herein, a young adult inmate serving a sentence for a crime contained in Category E of N.J.A.C. 10A:71-3.3 shall serve 12 additional months.

5. Except as provided herein, a young adult inmate serving a sentence for a crime contained in Category F of N.J.A.C. 10A:71-3.3 shall serve 10 additional months.

6. Except as provided herein, a young adult inmate serving a sentence for a crime contained in Category G of N.J.A.C. 10A:71-3.3 shall serve eight additional months.

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

(d) A three-member Board panel may establish a future parole eligibility date which differs from that required by the provisions of (a) or (b) and (c) above if the future parole eligibility date which would be established pursuant to such subsections is clearly inappropriate due to the inmate's lack of satisfactory progress in reducing the likelihood of future criminal behavior. In making the determination that the establishment of a future parole eligibility date pursuant to (a) or (b) and (c) above is clearly inappropriate, the three-member panel shall consider the factors enumerated in N.J.A.C. 10A:71-3.11.

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

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



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

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

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

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

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

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

(e) The Board, upon the conclusion of a hearing conducted pursuant to N.J.A.C. 10A:71-3.18(c), may establish a future parole eligibility date which differs from that required by the provisions of (a) or (b) and (c) above if the future parole eligibility date which would be established pursuant to such subsections is clearly inappropriate in consideration of the circumstances of the crime, the characteristics and prior criminal record of the inmate and the inmate's institutional behavior.

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

(f) If a three-member Board panel or the Board establishes, in the case of an inmate sentenced pursuant to N.J.S.A. 2A:113-4 for a term of life imprisonment, N.J.S.A. 2A:164-17 for a fixed minimum and maximum term or N.J.S.A. 2C:1-1(b), a future parole eligibility date which differs from the required by the provisions of (a) and (c)

above, the inmate shall be scheduled for an annual review hearing. The first annual review hearing shall be scheduled within 18 months from the month in which the decision to deny parole was rendered. Thereafter, annual review hearings shall be scheduled every 12 months until the inmate is within seven months of the actual parole eligibility date.

1. At the annual review hearing, which shall be conducted by a Board panel as designated by the Chairperson, the Board panel shall assess the inmate's progress in institutional or community educational, training or other programs, progress in substantially altering those factors which led to the inmate's incarceration, and progress which may indicate that the inmate has reduced the likelihood of future criminal behavior.

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

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

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

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

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

v. Continue the case until the next annual review.

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

4. If the Board panel determines that the inmate's case shall be referred for a parole release hearing pursuant to this subchapter, the Board panel shall provide personal notice to each member of the three-member Board panel or the Board, as appropriate, of its determination.

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

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

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

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

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

Amended by R.1980 d.226, effective May 21, 1980.  
See: 12 N.J.R. 335(b).

Amended by R.1980 d.359, effective August 7, 1980.  
See: 12 N.J.R. 420(b), 12 N.J.R. 538(a).

Amended by R.1981 d.179, effective June 7, 1981.  
See: 13 N.J.R. 228(c), 13 N.J.R. 364(c).

(c): "nine months" was "six months".  
Amended by R.1985 d.213, effective May 6, 1985.  
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Section substantially amended.  
Amended by R.1988 d.336, effective July 18, 1988.  
See: 19 N.J.R. 1396(b), 20 N.J.R. 1716(b).

Substituted "within 18" for "12".  
Administrative correction to (b)3.  
See: 21 N.J.R. 3777(b).

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

Recodified from N.J.A.C. 10A:71-3.19; changed terminology to that of the Comprehensive Drug Reform Act of 1986.  
Administrative correction to (b)3: changed 10 to 16.  
See: 22 N.J.R. 1265(d).

Amended by R.1990 d.257, effective May 21, 1990.  
See: 22 N.J.R. 899(a), 22 N.J.R. 1609(a).

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

Amended by R.1993 d.399, effective August 16, 1993.  
See: 25 N.J.R. 1665(a), 25 N.J.R. 3826(a).

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

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

In (d), rewrote the introductory paragraph.  
Amended by R.2001 d.271, effective August 6, 2001.

See: 33 N.J.R. 1044(a), 33 N.J.R. 2672(a).  
Rewrote (f)1.

#### Case Notes

State appellate court's affirmance of the parole board's imposition of future eligibility term (FET) far in excess of norm imposed for actual parole violation was unreasonable and in violation of parolee's substantive due process rights, even if initial revocation of parole based on disorderly persons marijuana infraction was not unreasonable, where, after federal court found that imposition of five year FET was excessive, board imposed additional consecutive term of eight years, despite lack of new criminal charges, based on facts and circumstances of parolee's original offense, erroneous statements regarding parolee's prison record, uncharged allegation of threat, presence at fundraiser for motorcycle gang member, and distortion of psychological report. *Hunterson v. DiSabato*, 140 F.Supp.2d 353 (2001).

Appropriate remedy for parole board's failure to demonstrate good cause for denying parole was immediate release on parole, where there was substantial evidence that the state parole officials sought to retaliate against parolee and his fiancée for their unfavorable testimony at state legislature, board had previously imposed additional consecutive future eligibility term (FET) of eight years after parolee had successfully obtained federal habeas relief, board continued to construct artificial factors to deny parole, and state appellate court had unreasonably upheld board's decision. *Hunterson v. DiSabato*, 140 F.Supp.2d 353 (2001).

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

Setting of 30-year future eligibility term (FET) in denying parole to inmate serving life term for first-degree murder of seven-year-old girl was within parole board's discretion under former regulation governing extension of FETs beyond the ordinarily prescribed length and was supported by substantial evidence. *McGowan v. NJ State Parole Bd.*, 347 N.J.Super. 544, 790 A.2d 974.

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

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

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

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

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

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

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

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

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

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

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

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

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

Added tentative release.

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

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

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

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

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

Act of Delinquency	Presumptive Term (months)	Range (months)
Murder (N.J.S.A. 2C:11-3(a)(1) or (2))	100	80-120
Murder (N.J.S.A. 2C:11-3(a)(3))	50	40-60
Crime of First Degree (except Murder)	20	16-24
Crime of Second Degree	16	12-18
Manufacturing, Distributing or Dispensing a Controlled Dangerous Substance second degree, Possession with Intent to Manufacture, Distribute or Dispense a Controlled Dangerous substance second degree	12	10-14
Crime of Third Degree	10	8-12
Crime of Fourth Degree	5	4-6
Disorderly Persons Offense	1.5	1-2

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

Act of Delinquency	Presumptive Term (months)	Range (months)
Murder (N.J.S.A. 2C:11-3(a)(1) or (2))	100	100-180
Murder (N.J.S.A. 2C:11-3(a)(3))	40	40-120
Crime of First Degree (except Murder)	20	16-42
Crime of Second Degree	16	12-20

Act of Delinquency	Presumptive Term (months)	Range (months)
Manufacturing, Distributing or Dispensing a Controlled Dangerous Substance second degree, Possession with Intent to Manufacture, Distribute or Dispense a Controlled Dangerous Substance second degree	12	12-20
Crime of Third Degree	12	12-20
Crime of Fourth Degree	5	4-6
Disorderly Persons Offense	1.5	1-2

(c) If a juvenile inmate has been committed for several acts of delinquency, the act of delinquency which represents the most serious act of delinquency shall be considered in determining the tentative parole release date.

(d) The hearing officer, the juvenile Board panel member or the juvenile Board panel shall consider the following mitigating and aggravating factors in determining whether to alter the tentative parole release date from the presumptive term established pursuant to (a) or (b) above:

#### 1. Mitigating factors:

- i. The inmate has no previous adjudications of delinquency.
- ii. The inmate has no previous commitments to a State juvenile facility.
- iii. The inmate has previously adjusted successfully to parole or probation.
- iv. The inmate acted under strong provocation.
- v. The inmate did not contemplate that his or her conduct would cause or threaten serious injury.

#### 2. Aggravating factors:

- i. The inmate has an extensive prior record.
- ii. The inmate's prior record consists of particularly serious acts of delinquency.
- iii. The inmate has been previously committed to a State juvenile facility.
- iv. The inmate has previously adjusted unsuccessfully to parole or probation supervision.
- v. The current act of delinquency was premeditated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Recodified with amendments from 3.28.

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

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

Added tentative.

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

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

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

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

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

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

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 (i) as (c) through (j).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In (d)1 and (f), changed N.J.A.C. references.

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

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

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

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

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

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

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

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

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

Added text "awarded by the sentencing court".

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

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

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

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

Former section recodified to N.J.A.C. 10A:71-3.35.

#### **10A:71-3.35 Notice of parole eligibility: county inmates**

(a) Whenever a county inmate's parole eligibility date is within six months of the date of sentence, the sentencing judge shall state such inmate's parole eligibility on the record. This action shall satisfy all public and inmate notice requirements.

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

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

Recodified from N.J.A.C. 10A:71-3.32, effective March 5, 1990.

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

Recodified from 10A:71-3.34 by R.1997 d.168, effective April 7, 1997.

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

Former section recodified to N.J.A.C. 10A:71-3.36.

#### **10A:71-3.36 Preparation of cases for parole hearings: county inmates**

(a) Forty-five days in advance of the parole eligibility date, the chief executive officer of the institution of incarceration or designee shall initiate the preparation of up-to-date staff reports.

(b) It shall be the responsibility of the chief executive officer or designee to file a report concerning the county inmate with the designated hearing officer or appropriate Board panel within 30 days in advance of the parole eligibility date.

(c) Such report shall consist of the following information:

1. The commitment order, including the sentencing court's written reasons for any sentence imposed, on all sentences being served;
2. The pre-sentence report, including a criminal case history record, on any offense of the fourth degree or greater;
3. The municipal court complaint(s) upon which the inmate's commitment is based;
4. A criminal case history record in the case of a commitment from a municipal court;
5. Division of Motor Vehicle case record (or Driver's Abstract) in the case of a commitment for any motor vehicle violation(s) or related offense(s);
6. Any statement or information submitted by the sentencing court, the prosecutor, the probation office or any other interested agency;
7. The status of any detainer(s);

(r) Upon receipt of an application by the Chairperson or designee subsequent to the conducting of an initial parole hearing and prior to a decision being rendered in the inmate's case, the appropriate Board members, Board panel or the Board shall not render a decision in the inmate's case until a hearing(s) has been conducted and the written report(s) prepared and made a part of the Board's file.

(s) Upon receipt of an application by the Chairperson subsequent to the rendering of a decision certifying parole release, the appropriate Board members, Board panel or the Board shall suspend the parole release date pursuant to N.J.A.C. 10A:71-5.1 pending the completion of the hearing(s) and the submission of a report(s).

1. Within 21 days of submission of the report(s), the Board member(s), Board panel or the Board shall:

- i. Evaluate the information provided;
- ii. Determine whether the decision shall be affirmed or modified;
- iii. Determine whether a rescission hearing shall be conducted pursuant to N.J.A.C. 10A:71-5; and
- iv. Notify the interested party who submitted the application pursuant to (a) above, the inmate and the Department or Commission in writing of its decision.

(t) The provisions of this section, except for public notice required pursuant to N.J.A.C. 10A:71-3.8, shall be applicable to the cases of juvenile and county inmates.

New Rule, R.1985 d.213, effective May 6, 1985.

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

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

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

Recodified from N.J.A.C. 10A:71-3.46; changed internal N.J.A.C. cite.

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

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

Recodified from 10A:71-3.48 and amended by R.1997 d.168, effective April 7, 1997.

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

In (s)iv, inserted reference to Commission. Former section recodified to N.J.A.C. 10A:71-3.50.

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

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

In (e), changed N.J.A.C. reference.

#### 10A:71-3.50 Conditions for parole release

(a) Release on a parole release date certified by Board members is conditioned upon:

1. The completion of a parole plan approved by the Board members certifying parole release and acceptable to the Division of Parole or Commission; and
2. Satisfactory completion of any specific pre-release conditions established by the Board members certifying parole release pursuant to N.J.A.C. 10A:71-3.16(b)(3) or 3.18(a)(1)(iii); and
3. The continuance of good institutional conduct.

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

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

Recodified with amendments from 3.29.

Recodified from N.J.A.C. 10A:71-3.47, effective March 5, 1990.

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

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

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

Recodified from 10A:71-3.49 and amended by R.1997 d.168, effective April 7, 1997.

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

In (a)1, inserted reference to Commission. Former section recodified to N.J.A.C. 10A:71-3.51.

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

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

#### 10A:71-3.51 Waiver of time limits

Upon request of the hearing officer or the inmate, the time limits contained in this subchapter may be waived by the appropriate Board panel for good cause.

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

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

Recodified with amendments from 3.30.

Recodified from N.J.A.C. 10A:71-3.48, effective March 5, 1990.

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

Recodified from 10A:71-3.50 by R.1997 d.168, effective April 7, 1997.

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

Former section recodified to N.J.A.C. 10A:71-3.52.

#### 10A:71-3.52 Interstate corrections compact and serving time out-of-state (s.t.o.s.) cases

(a) Upon notification being provided to the Board by the Department that an inmate has been transferred under the interstate corrections compact, N.J.S.A. 30:7C-1 et seq., to another state or Federal institution to continue the service of his or her custodial term, the Board shall continue to monitor the inmate's eligibility for parole.

(b) Upon notification being provided to the Board by the Department or an interested party that an offender had been sentenced to a custodial term which is to be served concurrent to an out-of-state or Federal sentence and that the offender is presently confined in an out-of-state or Federal institution, the Board shall:

1. Obtain from the Department or appropriate agency or court the necessary documentation, for example, judgment of conviction and adult presentence reports, in order to confirm the imposition of sentence and the applicable credits;
2. Compute the offender's parole eligibility date within 30 days of the receipt of the appropriate documentation;
3. Notify the Department and the offender in writing within 30 days thereafter of his or her primary parole eligibility date. Notification shall be forwarded to the offender at his present place of confinement; and
4. Monitor the offender's primary parole eligibility date while confined in the out-of-state or Federal institution.

(c) Five to seven months in advance of an offender's actual parole eligibility date, the Board shall notify the Department of those offenders who are eligible for parole consideration.

(d) In interstate corrections compact and s.t.o.s. cases, the Department within 30 days of notice being provided to the Department pursuant to (c) above shall request the out-of-state or Federal institutional authority to submit to the Board a report concerning the offender. The report shall consist of the information required in N.J.A.C. 10A:71-3.7(e)3 to 7.

(e) In interstate corrections compact and s.t.o.s. cases, public notice of parole eligibility shall be provided pursuant to N.J.A.C. 10A:71-3.8. Upon public notice of parole eligibility being issued, the Board shall notify the offender that his or her case will be reviewed for parole consideration. The offender shall be given 30 days to file with the Board a written statement and any other written information which the offender may wish the Board to review. In interstate corrections compact cases, the Board shall notify the offender that the out-of-state or Federal parole or release authority has been requested to conduct a parole hearing on behalf of the Board.

(f) Information, files, documents, reports, records or other written material submitted to the Board by an out-of-state or Federal institutional authority shall be deemed confidential as specified in N.J.A.C. 10A:71-2.1. The Board, however, shall maintain the confidentiality of any information, files, documents, reports, records or other written material as specified by the out-of-state or Federal institutional authority.

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

(h) In interstate compact cases, the Department on behalf of the Board shall request the appropriate parole or release authority to conduct a parole hearing and request that upon the conclusion of the hearing a copy of the record of the hearing, the report on the offender and any recommendation of the hearing official(s) be forwarded to the Board through the Department.

(i) Upon receipt of the offender's case records, report and relevant information, the Chairperson shall within 30 days assign the offender's case to a hearing officer for the conducting of an initial parole hearing which shall consist of an administrative review of the offender's case records, the report submitted by the out-of-state or Federal institutional authority and statements or information submitted by the offender and interested parties. At the conclusion of the initial parole hearing, the hearing officer shall comply with N.J.A.C. 10A:71-3.15 and a copy of the written case assessment shall be forwarded to the offender within seven days of the hearing date. The offender shall have 30 days to provide any additional comments or information for review by the Board.

(j) Upon expiration of the 30 days time period, the Chairperson shall assign two members of the appropriate Board panel to review the recommendation of the hearing officer. The assigned Board members shall comply with the provisions of N.J.A.C. 10A:71-3.16.

(k) Any case referred to a Board panel by a hearing officer pursuant to N.J.A.C. 10A:71-3.15 or by Board members pursuant to N.J.A.C. 10A:71-3.16 shall be scheduled by the Chairperson for a hearing by the appropriate Board panel.

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

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

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

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



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

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

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

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

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

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

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

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

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

New Rule, R.1994 d.272, effective June 6, 1994.

See: 26 N.J.R. 1191(a), 26 N.J.R. 2285(c).

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

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

Recodified from 10A:71-3.51 by R.1997 d.168, effective April 7, 1997.

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

### 10A:71-3.53 Medical parole

(a) Pursuant to N.J.S.A. 30:4-123.51c, the appropriate Board panel may release on medical parole any inmate, except as provided in (b) below, serving any sentence of imprisonment who has been diagnosed pursuant to (d) below as suffering from a terminal condition, disease or syndrome and is found by the appropriate Board panel to be

so debilitated or incapacitated by the terminal condition, disease or syndrome as to be permanently physically incapable of committing a crime if released on parole. Notwithstanding any provision of N.J.S.A. 30:4-123.45 et seq. or this chapter to the contrary, the appropriate Board panel may release on medical parole any such inmate at any time during the term of the sentence.

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

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

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

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

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

(f) The appropriate Board panel shall conduct its review of a request for medical parole as expeditiously as possible. However, at least five working days prior to commencing its review of a request for a medical parole, the appropriate Board panel shall notify the appropriate sentencing court; county prosecutor or, if the matter was prosecuted by the Attorney General, the Attorney General; and any victim or member of the family of a victim entitled to notice relating to a parole or the consideration of a parole under N.J.S.A.

30:4-123.45 et seq. The notice shall be in writing and shall contain all such information and documentation relating to the medical diagnosis prepared pursuant to (d) above as the Board shall deem appropriate and necessary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Pursuant to N.J.S.A. 2C:43-7.2(a) (No Early Release Act), a court imposing a sentence of incarceration for a crime of the first or second degree 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 commence immediately upon the offender being released from incarceration.

(d) Pursuant to N.J.S.A. 30:4-123.51b(a), an offender who has been sentenced to a term of parole supervision and is on release status in the community shall, during the term of parole supervision, remain on release status in the community, in the legal custody of the Commissioner. The offender shall be supervised by the 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, verbal, written or through a third party with the victim(s) of the offense or the victim's relatives unless contact is authorized by the assigned parole officer or contact is authorized by the appropriate court;

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

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

4. Responsibility for the delivery of the certificate shall rest with the designated representative of the 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 and the offender returned to custody for violation of a condition of supervision, the offender shall be required to serve the remainder of the term in custody and shall not be eligible for parole consideration on the remainder of the term.

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

(k) If an offender sentenced pursuant to N.J.S.A. 2C:43-7.2 is released on parole by a Board panel or the Board prior to the expiration of the sentence of incarceration, the conditions of supervision established pursuant to N.J.A.C. 10A:71-6.4(a) and (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.

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

New Rule, R.1998 d.391, effective August 3, 1998.

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

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".

#### **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).

### **SUBCHAPTER 4. APPEALS**

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

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

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

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

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

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

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

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

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

1. The Board panel failed to consider material facts.

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

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

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

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

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

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

Subsections (c) and (d) added.

#### Case Notes

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

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

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

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

1. The right to appear and speak in his or her own behalf and to be aided by an interpreter if such aid is determined to be necessary by the hearing officer.
2. The right to 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:71-2.4.
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:71-2.1 or the rules and regulations of the Department or Commission.

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

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

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

Subsection (a) deleted; old (b)-(c) recodified to (a)-(b).

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

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

In (a) and (b)8, inserted reference to Commission.

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

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

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

#### Case Notes

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

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

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

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

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

1. Such hearing summary shall be forwarded to the appropriate Board panel, and a copy of the summary shall be forwarded to the inmate's attorney or directly to the inmate where he or she has appeared pro se, in order that the inmate or his or her attorney may object or comment on the hearing summary by submitting written exceptions to the hearing summary. Such exceptions shall be forwarded to the Board panel within 14 days after the receipt of the hearing summary. The provisions of

N.J.A.C. 10A:71-2.1 shall be applicable to any hearing summary provided to the inmate.

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

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

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

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

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

Cite change at (d).

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

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

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

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

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

## SUBCHAPTER 6. SUPERVISION

### 10A:71-6.1 Administration

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

### 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, Bureau of Parole or Commission, and you are to report thereafter as instructed by the District Parole Supervisor or his or her designated representative, or the designated representative of the Commission.

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

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

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

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

ii. Before leaving the state of your approved residence.

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

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





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

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

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

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

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

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

14. You are not to operate a motor vehicle without a valid driver's license.

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

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

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

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

(e) Based on the prior history of the inmate or information provided by a victim or a member of the family of a murder victim, the Board members certifying parole release may impose any other specific conditions of parole deemed reasonable in order to reduce the likelihood of recurrence of criminal or delinquent behavior. In addition, the Board members certifying parole release may, giving due regard to

a victim's request, impose a special condition that the parolee have no contact with the victim, which special condition may include, but need not be limited to, restraining the parolee from entering the victim's residence, place of employment, business or school, and from harassing or stalking the victim or victim's relatives in any way.

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

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

2. The parolee is serving a sentence for the offense of murder, manslaughter, 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.

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

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

(m) Unless otherwise directed by the Board panel or Board, a specific condition imposed pursuant to (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.

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).

#### 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.

(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 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.

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

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

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

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

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

(e) If the Board panel determines that transfer of the supervision of the parolee's case to an out-of-State jurisdiction is appropriate, the Board panel shall submit the case materials to the 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.

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

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

(b) The special sentence of community supervision for life shall commence pursuant to N.J.S.A. 2C:43-6.4(b) upon the completion of the sentence imposed pursuant to the Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq. An offender serving a special sentence of community supervision for life shall be supervised by the 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 immediately after any arrest, after being served with or receiving a complaint or summons and after accepting any pre-trial release including bail;
4. Notify the assigned parole officer immediately upon the issuance by the appropriate court, pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., of an order granting emergency relief, a temporary or final restraining order or an order establishing conditions of release or bail in a criminal matter or offense arising out of a domestic violence situation, and comply with any condition established within the respective order until the order is dissolved by the appropriate court or until a condition is modified or discharged by the appropriate court;
5. Reside at a residence approved by the assigned parole officer;
6. Obtain the permission of the assigned parole officer prior to any change of address or residence;
7. Obtain the permission of the assigned parole officer prior to leaving the state of the approved residence for any purpose;
8. Refrain from owning or possessing any firearm, as defined in N.J.S.A. 2C:39-1f, for any purpose;
9. Refrain from owning or possessing any weapon enumerated in N.J.S.A. 2C:39-1r;
10. Refrain from the purchase, use, possession, distribution or administration of any narcotic or controlled dangerous substance, controlled dangerous substance analog, imitation controlled dangerous substance or any paraphernalia related to such substances except as prescribed by a physician;
11. Cooperate in any medical and/or psychological examination or tests as directed by the assigned parole officer;
12. Participate in and successfully complete an appropriate community or residential counseling or treatment program as directed by the assigned parole officer;
13. Submit to drug or alcohol testing at any time as directed by the assigned parole officer;

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

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

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

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

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

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

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

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

22. 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.

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

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

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

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

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

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

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

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

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

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

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

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

1. Refrain from any use of alcohol; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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".

#### Case Note

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.

## 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.

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).

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

See: 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.

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

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

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

In (a), inserted reference to the Commission.

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

See: 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 from the list maintained in accordance with R.3:27-2, provided the parolee first makes such a request based on a timely and colorable claim that:

- i. The parolee did not commit the alleged violation of the specified parole condition(s); or
- ii. The parolee did commit the violation of the specified parole condition(s), but there are substantial reasons which justified or mitigated the violation(s) and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present.
3. The right to remain silent.
4. The right to present witnesses to testify in his or her behalf as to matters relevant to the alleged violation(s) of parole.
5. The right to confront and cross-examine adverse witnesses, unless the hearing officer determines that such witnesses would be subjected to risk or harm.
6. The right to present documentary evidence and any other relevant material or information.
7. The right to waive such hearing.
8. The right to request postponement of such hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The hearing officer shall immediately withdraw the warrant, 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.

#### 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).