

CHAPTER 71

PAROLE

Authority

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

Source and Effective Date

R.2005 d.127, effective March 24, 2005.
See: 36 N.J.R. 4407(a), 37 N.J.R. 1191(b).

Chapter Expiration Date

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

Chapter Historical Note

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

Pursuant to Executive Order No. 66(1978), Chapter 71, Parole, was readopted as R.1985 d.213, effective April 15, 1985. See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Pursuant to Executive Order No. 66(1978), Chapter 71, Parole, was readopted as R.1990 d.141, effective February 5, 1990. See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

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

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

Chapter 71, Parole, was readopted as R.2005 d.127, effective March 24, 2005. See: Source and Effective Date. See, also, section annotations.

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

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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 administrator, warden, superintendent or keeper of any county correctional facility or State correctional facility.

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

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

“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 and juvenile offenders released on parole by the State Parole Board from an adult correctional facility; the supervision of parolees who are serving a mandatory period of parole supervision pursuant to N.J.S.A. 2C:43-7.2(c); 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 and parolees assigned to the Electronic Monitoring Program; the supervision of offenders sentenced to community supervision for life; the supervision of offenders sentenced to parole supervision for life; the supervision of offenders sentenced to a period of mandatory parole supervision; the supervision of juvenile offenders released from an adult correctional facility for the service of a term of post-incarceration; and the supervision of certain Executive Clemency cases.

"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; an adult offender under supervision serving a term of mandatory parole supervision pursuant to N.J.S.A. 2C:43-7.2(c); and an adult offender under supervision serving a special sentence of parole supervision for life.

"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.

Sec: 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.

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

Institutional name change.

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

Sec: 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.

Sec: 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".

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

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

In "Chief Executive Officer" inserted "administrator, " preceding "warden"; rewrote "Division of Parole" and "Parolee".

10A:71-1.2 Board meetings

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

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

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

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

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

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

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

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

(e) When 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:71-1.5, 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.
Sec: 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.
Sec: 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.
Sec: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).
Amended by R.1997 d.168, effective April 7, 1997.
Sec: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (a)1, inserted reference to Commission; in (a)2, inserted reference to Commission's representatives.
Amended by R.2001 d.271, effective August 6, 2001.
Sec: 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".
Amended by R.2005 d.127, effective April 18, 2005.
Sec: 36 N.J.R. 4407(a), 37 N.J.R. 1191(b).

In (h), amended the N.J.A.C. reference.

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) 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.

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

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

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

Deleted (d) and recodified former (e) and (f) as (d) and (e).

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;

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 on 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).

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

(b) 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, shall extend the time period for submission of public comments for an additional 30 day period, if within 30 days of the publication of a notice of proposal sufficient public interest is demonstrated in an extension of time to submit comments.

(c) Sufficient public interest is demonstrated in regard to an extension of the comment period when 50 individuals or more have either expressed in writing the need for the extension of the comment period or disagreement with one or more substantive provisions of the rule proposal.

(d) 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 conduct a public hearing on a proposed rulemaking, at its discretion, without the need for a specific request or the demonstration of sufficient public interest.

(e) 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, shall conduct a public hearing on a proposed rulemaking at the request of a Legislative Committee, a State agency, or a county, local or municipal governmental entity, if such request is made to the Board within 30 days of the publication of a notice of proposal, or if sufficient public interest is demonstrated.

(f) Sufficient public interest is demonstrated in regard to the conducting of a public hearing when 100 or more individuals have either expressed in writing the need for a public hearing on the rule proposal or disagreement with one or more substantive provisions of the rule proposal.

(g) In the calculation of the number of comments received for the purpose of determining sufficient public interest pursuant to (c) above, the Board shall not consider the following:

1. Comments that relate to other amendments suggested by the commenter which the Board does not have the legal authority to make;
2. Comments submitted in support of a proposed new rule or rule modification or amendment;
3. Comments that relate to proposed new rule or rule modification or amendment which the Board is required to make pursuant to statutory amendment, case law, or legal advice provided by the Department of Law and Public Safety.

(h) In the calculation of the number of comments received for the purpose of determining sufficient public interest pursuant to (f) above, the Board shall not consider the following:

1. Comments that relate to other amendments suggested by the commenter which the Board does not have the legal authority to make;
2. Comments submitted in support of a proposed new rule or rule modification or amendment;
3. Comments that relate to proposed new rule or rule modification or amendment which the Board is required to make pursuant to statutory amendment, case law, or legal advice provided by the Department of Law and Public Safety; or
4. Comments from incarcerated individuals not authorized to attend a public hearing.

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

10A:71-1.12 Petition for rulemaking

(a) An interested person may petition the Board to adopt a new rule or amend or repeal an existing rule.

(b) The petition shall be in writing; be legible and intelligible; and be signed by the petitioner.

(c) Each petition shall contain the following information:

1. The full name and address of the petitioner;
2. The citation of the rule for which the proposal is made, using N.J.A.C. references, where applicable;
3. A clear and concise statement summarizing the substance or nature of the rulemaking which is requested;
4. The reasons for the request and the petitioner's interest in the request; and
5. Reference(s) to the authority under which the Board is authorized to act.

(d) The petitioner may include in the petition the text of the proposed new rule, amended rule or repealed rule.

(e) The petition shall be sent to the Chairperson, State Parole Board at PO Box 862, Trenton, New Jersey 08625-0862.

(f) Upon the Chairperson's receipt of a petition which satisfies the requirements of (b) and (c) above, the Board shall, within 15 days of receipt of the petition, file with the Office of Administrative Law for publication in the New Jersey Register a notice of the receipt of the petition pursuant to N.J.A.C. 1:30-4.1(c).

(g) Within 60 days of receipt of a rulemaking petition which satisfies the requirements of (b) and (c) above, the Board shall mail to the petitioner, and file with the Office of Administrative Law for publication in the New Jersey Register, a notice of action on the petition. The notice of action shall comply with the requirements of N.J.A.C. 1:30-4.2(b).

(h) Within 60 days of receipt of a rulemaking petition which satisfies the requirements of (b) and (c) above, the Board shall either:

1. Deny the petition, in which case the Board shall provide a written statement of its reasons to the petitioner, and include such reasons in its notice of action;
2. Grant the petition and initiate a rulemaking proceeding within 90 days of the granting of the petition; or
3. Refer the matter for further deliberation, the nature of which shall be specified to the petitioner and in the notice of action and which shall conclude within 90 days of such referral. Upon conclusion of such further deliberation, the Board shall either deny the petition or grant the petition and initiate a rulemaking proceeding within 90 days. The Board shall notify the petitioner in writing of its determination on the petition and submit its determination to the Office of Administrative Law for publication in the New Jersey Register.

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

SUBCHAPTER 2. GENERAL ADMINISTRATIVE PROVISIONS

10A:71-2.1 Confidentiality of information and records

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

1. Reports which are evaluative, diagnostic or prognostic in nature, furnished with a legitimate expectation of confidentiality and which, if revealed to the inmate/parolee or others, could be detrimental to the inmate, adversely affect the inmate's rehabilitation or the future delivery of rehabilitative services, jeopardize the physical safety of individuals who signed the reports or were parties to the decisions, conclusions, or statements contained therein;
2. Information, files, documents, reports, records or other written materials which, if disclosed, could have an adverse impact on the security or orderly operation of an institution;
3. Information, files, documents, reports, records or other written materials which, if disclosed, would infringe or jeopardize privacy rights of the inmate/parolee or others or endanger the life or physical safety of any person;

4. Disciplinary and investigative reports, including those from informants, which, if disclosed, would impede ongoing investigations, create a risk of reprisal, or interfere with the security or orderly operation of an institution;

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

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

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

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

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

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

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

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

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

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

Amended by R.1989 d.151, effective March 20, 1989.

See: 20 N.J.R. 2129(a), 21 N.J.R. 767(a).

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

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

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

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

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

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

Case Notes

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

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

Statute and rule established a confidentiality exception to parole record disclosure sufficiently protective of a prisoner's interest; documents in parole file administratively removed from prisoner's copy must be identified confidential and the reason for nondisclosure noted in the Parole Board's file; denial of parole found sufficiently supported by information openly before the Board without any suggestion that materials withheld for confidentiality reasons played a substantial role. *Thompson v. New Jersey State Parole Bd.*, 210 N.J.Super. 107, 309 A.2d 241 (App.Div.1986).

10A:71-2.2 Records retention

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

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

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

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

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

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

10A:71-2.3 Subpoenas

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

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

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

Corrected subpoena.

10A:71-2.4 Institutional infractions

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

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

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

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

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

Deleted text "relating to the infraction".

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

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

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

Petition for Rulemaking.

See: 33 N.J.R. 4034(b).

Petition for Rulemaking.

See: 34 N.J.R. 608(b).

Case Notes

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

10A:71-2.5 Institutional representatives

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

SUBCHAPTER 3. PAROLE RELEASE HEARINGS**10A:71-3.1 Definitions**

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

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

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

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

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

"Primary eligibility date" shall mean the parole eligibility date established pursuant to N.J.S.A. 30:4-123.51 and N.J.S.A. 30:4-123.64, based upon the sentence imposed by

the court or the Board schedules contained in N.J.A.C. 10A:71-3.3, 7.17, 7.17A and 7.17B. Such date may be altered pursuant to N.J.A.C. 10A:71-3.4, 3.5 and 3.21.

"Projected eligibility date" shall mean that date calculated by the application, except as otherwise provided by statute, of the following credits: commutation credits; credit for time served in a county jail prior to the date of sentence; earned work and minimum custody credits as of a specific date and projected work and minimum custody credits based on a pattern of such credits established by the Department. Any change in the pattern shall be reported by the Department to 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).

Section substantially amended.

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

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

Introductory language added.

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

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

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

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

Amended "Primary eligibility date".

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

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

In "Primary eligibility date", changed N.J.A.C. references.

Case Notes

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

10A:71-3.2 Calculation of parole eligibility terms

(a) This section shall not apply to adult inmates sentenced pursuant to N.J.S.A. 2A:113-4 for a term of life imprisonment, N.J.S.A. 2A:164-17 for a fixed minimum and maximum term or N.J.S.A. 2C:1-1(b). The aggregation provisions of N.J.S.A. 30:4-123.1, et seq. shall apply to such inmates.

(b) Except as provided in N.J.A.C. 10A:71-3.3(j), this section shall not apply to juvenile or young adult inmates.

(c) The parole eligibility terms for adult inmates shall be determined by the following:

1. Where a life term, with no mandatory-minimum term, has been imposed, the parole eligibility term shall, except as provided in (c)3 below, be 25 years.
2. Where a specific term, with no mandatory-minimum term, has been imposed, the parole eligibility term shall, except as provided in (c)3 below, be one-third of the specific term or 25 years, whichever is less.
3. Where a life term or a specific term with a judicial or statutory mandatory minimum term has been imposed, the parole eligibility term shall be the mandatory minimum term, provided that such minimum term is greater than otherwise required by subsection (c)1 or (c)2 above.

4. Where the inmate is serving a term and a concurrent or consecutive specific term, with no mandatory-minimum term, is subsequently imposed on or after June 21, 1994, the parole eligibility term on the subsequently imposed specific term shall be one-third of the balance of the specific term determined by reducing the specific term by credit awarded pursuant to N.J.S.A. 2C:44-5(b)(2).

5. Where the inmate is serving time due to a revocation of parole, the parole eligibility term shall be the future parole eligibility term set by the appropriate Board panel upon revocation of parole pursuant to N.J.A.C. 10A:71-7.17, 7.17A or 7.17B.

6. Where the inmate has been required to serve an additional term due to institutional infractions, the parole eligibility term shall include any additional term of incarceration required to be served.

7. Where a specific term to the Adult Diagnostic and Treatment Center has been imposed, the inmate shall be eligible for parole consideration only upon recommendation by the Special Classification Review Board pursuant to N.J.S.A. 2C:47-5 except that in no case shall an inmate committed to the Adult Diagnostic and Treatment Center become eligible for parole prior to the expiration of any mandatory minimum term imposed.

8. Where the inmate has been denied parole and required to serve a future eligibility term pursuant to N.J.A.C. 10A:71-3.21, a new book eligibility date shall be established by adding the additional term to the current actual eligibility date and by including, in the case of an adult inmate, commutation credits based on the additional term only.

9. Where the inmate's actual eligibility date has passed at the time of the initial parole release hearing and the inmate has been denied parole and required to serve a future eligibility term pursuant to N.J.A.C. 10A:71-3.21, a new book date shall be established by adding the additional term to the actual eligibility date and by including, in the case of an adult inmate, commutation credit based on the additional term only.

10. If an inmate has been committed to the custody of the Department from the Intensive Supervision Program for any reason and if the inmate's parole eligibility date is the date the inmate is committed to the custody of the Department, the following provisions shall apply in the case of an inmate denied parole release:

- i. A new book eligibility date shall be established by adding the additional term established pursuant to N.J.A.C. 10A:71-3.21 to the date the inmate is committed to the custody of the Department.
- ii. In the case of an adult inmate, the new book date shall include commutation credits based on the additional term only.

iii. In the case of an adult inmate, only work and minimum credits earned from the date the inmate is committed to the custody of the Department shall be applied in the calculation of the actual eligibility date. In the case of a young adult inmate, program participation credits determined pursuant to N.J.A.C. 10A:71-3.3 shall be applied to reduce the primary eligibility date established pursuant to this section.

(d) When a consecutive term is imposed, the parole eligibility term derived from the consecutive term, less county jail credits, shall be added to the parole eligibility term derived from the original term, less county jail credits, to determine the aggregate parole eligibility term. Applicable credits pursuant to (g)2 and (g)3 below shall be deducted from the aggregate parole eligibility term unless said term is determined pursuant to (c)3 above.

(e) When a concurrent term(s) is imposed, the parole eligibility term from the original term, less county jail credits, shall be added to the date the original term began to determine the flat eligibility date on the original term. The parole eligibility term on the concurrent term(s), less county jail credits, shall be added to the date the concurrent term(s) began to determine the flat eligibility date on the concurrent sentence. The aggregate parole eligibility term shall be that period of time between:

1. The earlier of the two dates on which the terms began; and
2. The later of the two flat parole eligibility dates. Applicable credits pursuant to (g)2 and (g)3 below shall be deducted from the aggregate parole eligibility term unless said term is determined pursuant to (c)3 above.

(f) Where a specific term to the Adult Diagnostic and Treatment Center has been imposed and the inmate is eligible for parole consideration pursuant to (c)7 above, the parole eligibility term, for the purposes of aggregation with any specific or life term, shall be set by the adult Board panel upon its acceptance of the recommendation by the Special Classification Review Board submitted pursuant to N.J.S.A. 2C:47-5(a).

(g) Credits shall reduce parole eligibility terms as follows:

1. County jail credits pursuant to R.3:21-8 shall reduce any parole eligibility terms determined pursuant to (c) above.
2. Commutation credits applied pursuant to N.J.S.A. 30:4-140 and credits for diligent application to work and other assignments earned pursuant to N.J.S.A. 30:4-92 shall reduce any aggregate parole eligibility terms except those determined pursuant to (c)3 above.
3. When an aggregate parole eligibility term includes a parole eligibility term determined pursuant to (c)3, such aggregate term shall be reduced by credits pursuant to (g)2 provided, however, that such credits accrued shall

only be awarded subsequent to the expiration of the eligibility term determined pursuant to (c)3 above as calculated from the date such parole eligibility term began.

4. Upon the expiration of a parole eligibility term determined pursuant to (c)3 above, commutation credits and credits for diligent application to work and other assignments accrued during the service of the parole eligibility term determined pursuant to (c)3 above shall not reduce an adjusted parole eligibility date established pursuant to N.J.A.C. 10A:71-3.4 or a future parole eligibility date established pursuant to N.J.A.C. 10A:71-3.21, 3.47, 7.17, 7.17A or 7.17B.

(h) Parole eligibility terms shall be restricted as follows:

1. No inmate committed for a specific term(s) of years at the State Prison or the Edna Mahan Correctional Facility for Women shall become primarily eligible for parole until service of a full nine months of the aggregate term less any county jail credits, provided, however, that when the specific terms of years to the State Prison or the Correctional Institution for Women is less than 12 months this restriction shall not apply.

2. No aggregate parole eligibility term resulting from the aggregation of specific terms, which do not include a mandatory-minimum term(s), shall exceed 25 years.

3. No parole eligibility term resulting from a non-criminal violation(s) of parole conditions shall, after deductions for credits pursuant to (g)2 above, exceed 12 months.

(i) In the case of an adult inmate who is serving a sentence for an offense committed on or after August 19, 1997 and who has been denied parole and required to serve a future eligibility term pursuant to N.J.A.C. 10A:71-3.21, the new parole eligibility date shall not include reductions for commutation credits pursuant to N.J.S.A. 30:4-140 and credits for diligent application to work and other assignments earned pursuant to N.J.S.A. 30:4-92.

(j) Pursuant to N.J.S.A. 30:4-123.51(k), an inmate sentenced to imprisonment pursuant to paragraph (2) or (3) of subsection (b) of N.J.S.A. 2C:11-3 (murder) shall not be eligible for parole.

(k) Pursuant to N.J.S.A. 2C:47-5(f), an inmate sentenced to life imprisonment at the Adult Diagnostic and Treatment Center for a crime whose circumstances conform to those enumerated in paragraph (3) of subsection (b) of N.J.S.A. 2C:11-3 (murder) shall not be eligible for parole.

(l) Pursuant to N.J.S.A. 30:4-123.51c, the appropriate Board panel may release an inmate serving a sentence of imprisonment on medical parole, N.J.A.C. 10A:71-3.53, at any time.

(m) Pursuant to N.J.S.A. 30:4-123.51(e)1, an inmate sentenced for an offense specified in N.J.S.A. 2C:47-1 which was committed on or after December 1, 1998 shall become primarily eligible for parole as follows:

1. If the court finds that the inmate's conduct was not characterized by a pattern of repetitive, compulsive behavior or finds that the inmate is not amenable to sex offender treatment, or if after sentencing the Department of Corrections in its most recent examination determines that the inmate is not amenable to sex offender treatment, the inmate shall become primarily eligible for parole after having served any judicial or statutory mandatory minimum term or one-third of the sentence imposed where no mandatory minimum term has been imposed. Neither such terms shall be reduced by commutation time for good behavior pursuant to N.J.S.A. 30:4-140 or credits for diligent application to work and other institutional assignments pursuant to N.J.S.A. 30:4-92.

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

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

Section substantially amended.

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

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

Added (g)4.

Administrative correction, effective January 27, 1989.

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

Institutional name change.

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

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

Internal N.J.A.C. cites amended.

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

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

In (c)7: deleted text with requirement that future parole eligibility terms imposed upon the denial of parole commence upon the date of the initial parole release hearing in specified cases. Added (c)8.

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

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

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

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

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

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

In (c)5 and (g)4, inserted additional N.J.A.C. reference.

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

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

In (g)4, substituted a reference to N.J.A.C. 10A:71-3.47 for a reference to N.J.A.C. 10A:71-3.46.

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

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

Added (i) through (l).

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

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

In (b), changed N.J.A.C. reference; in (c)7, deleted a former i; rewrote (f); and added (m).

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

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

In (c)5 and (g)4, changed N.J.A.C. references.

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)8, substituted "actual" for "book"; rewrote introductory paragraph in (c)10; in (c)10i and (c)10iii, substituted "the inmate is committed to the custody of the Department" for "of the inmate's return to confinement".

Law Review and Journal Commentaries

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

Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Crime Category	0-4	5-9	10-14	15-19	20-24	25-29	30-Life
Category A		40	56	74	90	106	120
Category B	16	32	40	48	56	56	56
Category C	16	28	36	44	52		
Category D	14	20	28	36	44		
Category E	12	14	18	22	22		
Category F	10	10					
Category G	8						

Category A: Murder.

Category B: Aggravated manslaughter, kidnapping first degree, aggravated sexual assault, or any other first degree crime.

Category C: Robbery first degree.

Category D: Manslaughter, robbery second degree, aggravated assault second degree, sexual assault, or any other second degree crime.

Category E: Manufacturing, distributing or dispensing a controlled dangerous substance second degree or possession with intent to manufacture, distribute or dispense a controlled dangerous substance second degree.

Category F: Burglary third degree, possession of a weapon for an unlawful purpose third degree, unlawful possession of a weapon third degree, terroristic threats, aggravated assault third degree, death by auto, endangering the welfare of a child third degree, any other third degree crime or possession of controlled dangerous substance.

Category G: Criminal sexual contact, forgery fourth degree, unlawful possession of a weapon fourth degree, certain persons not to have weapons, criminal trespass, or any other fourth degree crime.

(b) The presumptive primary eligibility date established pursuant to (a) above may be reduced by up to ten months if the young adult Board panel or the hearing officer establishing the date determines that one or more mitigating factors such as, but not limited to, the following are present:

1. The inmate has no prior adult convictions.
2. The inmate has previously adjusted successfully to parole or probation.
3. The inmate acted under strong provocation.
4. The inmate did not contemplate that his or her conduct would cause or threaten serious injury.
5. The inmate has no prior incarcerations.

(c) The presumptive primary eligibility date established pursuant to (a) above may be increased by up to 10 months if the young adult Board panel or the hearing officer establishing the date determines that one or more of the following aggravating factors are present:

1. The inmate has an extensive prior record.
2. The inmate's prior record consists of particularly serious crimes.
3. The inmate has previously adjusted unsuccessfully to parole or probation supervision or the present term involves unsuccessful adjustment to probation supervision.
4. The current offense was premeditated.
5. The inmate used a weapon during the current offense.
6. The current offense involved an injury to the victim.
7. The inmate has received additional concurrent or consecutive sentences.

(d) If an inmate has received more than one term, the longest term imposed shall be used in determining the presumptive primary eligibility date or, if the terms are of equal length, the crime which, in the opinion of the hearing officer or the young adult Board panel, represents the most serious crime shall be used in determining the presumptive primary eligibility date.

(e) The young adult Board panel may establish a primary eligibility date which differs from that required by the provisions of (a), (b) and (c) above, if the primary eligibility date which would be established pursuant to such subsections is clearly inappropriate in consideration of the circumstances of the crime and the characteristics and prior criminal record of the inmate.

1. If, in the opinion of the hearing officer establishing the primary eligibility date, the date which would be established pursuant to (a), (b) and (c) above is clearly inappropriate as provided herein, the hearing officer shall refer such case to the young adult Board panel.

2. The young adult Board panel or the hearing officer shall, at least 14 days prior to the Board panel's determination of the primary eligibility date, notify the inmate in writing that a primary eligibility date pursuant to (a), (b) and (c) above has not been established and the reasons therefor.

3. The young adult Board panel shall, upon disposition of the case, state in writing to the inmate and the Board the reasons for the establishment of any primary eligibility date which differs from the provisions of (a), (b) and (c) above.

(f) Credit awarded by the sentencing court pursuant to R.3:21-8 for time served in a county jail prior to the date of sentence shall reduce the presumptive primary eligibility date established pursuant to (a), (b), (c) or (e) above.

(g) Except as provided herein, any primary eligibility date for a young adult offender established pursuant to this section or N.J.A.C. 10A:71- 7.17, 7.17A or 7.17B may be reduced through program participation by the inmate.

1. If such inmate's level of program participation is above average, the reduction shall be the rate of 15 days for every month of the primary eligibility term less jail credits.

2. If such inmate's level of program participation is average, the reduction shall be at the rate of 10 days for every month of the primary eligibility jail term less jail credits.

3. If such inmate's level of program participation is below average, the 150 reduction shall be at the rate of five days for every month of the primary eligibility term less jail credits.

4. If such inmate's level of program participation is poor, no reduction shall be made.

(h) An inmate's level of program participation shall be established by the young adult Board panel or an assigned hearing officer.

1. Upon the expiration of one-half of the inmate's primary eligibility term less jail credits, or upon incarceration for a one-year period, whichever is earlier, it shall be the responsibility of the chief executive officer of the institution of incarceration to report to the young adult Board panel, the extent of the inmate's program participation and the level of progress achieved by the inmate.

2. Upon consideration of such report, the young adult Board panel or an assigned hearing officer shall establish the inmate's level of program participation and corresponding eligibility reduction and shall advise the inmate and the chief executive officer in writing of such determination and the reasons therefor.

(i) Parole eligibility dates shall be restricted as follows:

1. Except in the case of murder or kidnapping, under no circumstances shall a primary eligibility date for a young adult inmate sentenced for a first degree crime be established at greater than 60 months.

2. Under no circumstances shall a primary eligibility date for a young adult inmate sentenced for a second degree crime be established at greater than 28 months.

3. Under no circumstances shall a primary eligibility date for a young adult inmate sentenced for a third degree crime be established at greater than 16 months.

4. Under no circumstances shall a primary eligibility date for a young adult inmate sentenced for a fourth degree crime be established at greater than nine months.

(j) If an adult has received an indeterminate sentence and a State Prison sentence, the parole eligibility term derived from the indeterminate sentence shall be aggregated with the eligibility term on the State Prison sentence and credits pursuant to N.J.A.C. 10A:71-3.2(g)2 shall apply to the aggregate parole eligibility term.

(k) The prior provisions of (a) above shall apply to young adult inmates whose offenses were committed prior to March 5, 1990 and shall continue in effect for that purpose. The amendments to (a) above shall apply to young adult inmates whose offenses were committed on or after March 5, 1990.

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

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

As amended, R.1980 d.359, effective August 7, 1980.

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

As amended, R.1980 d.554, effective December 23, 1980.

See: 12 N.J.R. 664(e), 13 N.J.R. 101(c).

(f)1-3, 5 and (g)1: term "less jail credits" added.

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.1986 d.306, effective August 4, 1986.

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

New (f): redesignated (f)-(j) as (g)-(k).
Amended by R.1990 d.141, effective March 5, 1990.
See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

Specifies Category E is second degree offense and changes effective date in (k) to March 5, 1990.

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 (g), inserted additional N.J.A.C. reference.

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

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

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

Case Notes

"Gap time credit" applied to reduce the maximum indeterminate sentence to which a juvenile could be subject. *Mitnaul v. New Jersey State Parole Bd.*, 280 N.J.Super. 164, 654 A.2d 1022 (A.D.1995).

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

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

Failure to justify by good cause imposition of concurrent seven-year indeterminate terms upon young adult offender required reduction to term not exceeding five years. *State v. Davis*, 229 N.J.Super. 66, 550 A.2d 1241 (A.D.1988).

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

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

10A:71-3.4 Institutional infractions; adult inmates

(a) It shall be the responsibility of the chief executive officer, within seven days of resolution of any administrative appeal, to notify in writing the senior Board representative at the institution that an adult inmate has committed an institutional infraction listed in (c) below.

(b) Except as otherwise provided in N.J.A.C. 10A:71-5, upon being advised by the senior Board representative at the institution that an adult inmate has committed an institutional infraction listed in (c) below, the appropriate Board panel or designated hearing officer may increase the inmate's eligibility date according to the schedule listed herein.

(c) The appropriate Board panel, designated hearing officer or senior Board representative at the institution shall, at least 14 days prior to the consideration of the adult inmate's case, notify the inmate in writing of the following:

1. The inmate's case and institutional records will be reviewed for the possible increase in the inmate's parole eligibility date as a result of the commission of an institutional infraction(s);

2. The inmate may submit in writing to the appropriate Board panel or designated hearing officer a statement pertaining to any mitigating circumstances.

(d) Institutional infractions specified and defined by the Department shall be assigned to categories on the following basis:

1. Infraction Category A shall consist of .001, Killing.

2. Infraction Category B shall consist of .101, Escape (provided such escape is from a medium or maximum security location); .201, Possession or introduction of an explosive, incendiary device or any ammunition; .202, Possession or introduction of a gun, firearm, weapon, sharpened instrument, knife, or unauthorized tool (provided such weapon is a gun or other firearm); and .251, Rioting.

3. Infraction Category C shall consist of .003, Assaulting any person with a weapon; .006, Extortion, blackmail, protection, demanding or receiving favors, money or anything of value in return for protection against others, to avoid bodily harm, or under threat of informing; .101, Escape (provided such escape is from a minimum security location); .102, Attempting or planning escape (provided such attempt is from a medium or maximum security location); .202, Possession or introduction of a gun, firearm, weapon, sharpened instrument, knife, or unauthorized tool (provided such weapon is not a gun or other firearm); .252, Encouraging others to riot; and .551, Making or possessing intoxicants or alcoholic beverages.

4. Infraction Category D shall consist of .002, Assaulting any person; .102, Attempting or planning escape (provided such attempt is from a minimum security location); .007, Hostage taking; .151, Setting a fire; .155, Adulteration of any food or drink; .203, Possession or introduction of any narcotic paraphernalia, drugs, or intoxicants not prescribed for the individual by the medical or dental staff; .204, Use of any narcotic paraphernalia, drugs, or intoxicants not prescribed for the individual by the medical or dental staff; .207, Possession of money or currency (in excess of \$50.00 unless specifically authorized); .214, Possession of unauthorized keys or other security equipment; .253, Engaging in, or encouraging, a group demonstration; .255, Encouraging others to refuse to work or to participate in work stoppage; .552, Being intoxicated; and .751, Giving or offering any official or staff member a bribe, or anything of value.

5. Infraction Category E shall consist of .004, Fighting with another person; .005, Threatening another with bodily harm or with any offense against his person or his property; .153, Stealing (Theft); .257, Violating a condition of any community release program; .258, Refusing to submit to urine analysis; .325, Counterfeiting, forging or unauthorized reproduction or unauthorized use of any classification document, court document, psychiatric, psychological or medical report, money or any other official document; .704, Perpetrating frauds, deceptions, confidence games, riots or escape plots through mail; and .708, Refusal to submit to a search.

6. Infraction Category F shall consist of .205, Misuse of authorized medication; .306, Conduct which disrupts or interferes with the security or orderly running of the institution; and .601, Gambling.

7. Infraction Category G shall consist of .803, Attempting to commit any of the above acts preceded by an asterisk, aiding another person to commit any such act, or making plans to commit such acts shall be considered the same as a commission of the act itself.

(e) Except as provided herein, an infraction in any category defined pursuant to (d) above shall result in an increase of the inmate's eligibility date as follows:

1. Category A: 60 months;
2. Category B: 12 months;
3. Category C: Nine months;
4. Category D: Six months;
5. Category E: Four months;
6. Category F: Three months;

7. Category G: One half of the increase which would be required pursuant to this subsection if the inmate's action had resulted in the commission of the infraction which he or she attempted.

(f) The appropriate Board panel or designated hearing officer shall notify the inmate and the chief executive officer of the institution or designee in writing of a determination to increase or not increase the inmate's parole eligibility.

1. If the inmate's parole eligibility date is to be increased, the notice shall include the time period by which the parole eligibility date is to be increased.

2. If the inmate's parole eligibility date is to be increased, the senior Board representative at the institution shall, within 90 days of the appropriate Board panel's or designated hearing officer's decision, notify the inmate and the chief executive officer of the institution or designee in writing of the new parole eligibility date.

(g) When, in the opinion of the designated hearing officer or Board panel reviewing an infraction pursuant to this section, the inmate's conduct and the characteristics of the inmate warrant an adjustment in the increase in the eligibility date required pursuant to (e) above, the eligibility date may be further increased due to aggravating factors or may

be decreased due to mitigating factors by up to the following time periods:

1. Category A: 12 months;
2. Category B: Six months;
3. Category C: Four months;
4. Category D: Three months;
5. Category E: Four months;
6. Category F: Three months;
7. Category G: Three months, provided no reduction of the previous eligibility date is made.

(h) The appropriate Board panel, upon the recommendation from the designated hearing officer, may determine that no increase in the eligibility date shall result from an infraction, or the Board panel may establish an increase which differs from that required by the provisions of (e) and (g) if the increase which would be established pursuant to such subsections is clearly inappropriate in consideration of the severity of the inmate's conduct and the characteristics of the inmate.

1. If, in the opinion of the hearing officer establishing the increase in the eligibility date, the increase which would be established pursuant to (e) and (g) above is clearly inappropriate as provided herein, the hearing officer shall refer such case to the appropriate Board panel.

2. Upon determining that the increase in eligibility pursuant to (e) and (g) above is inappropriate, the hearing officer shall, at least 14 days prior to the Board panel's consideration of the case, notify the inmate in writing that an increase in the eligibility date pursuant to (e) and (g) above has not been established and the reasons therefor.

3. The Board panel shall, upon disposition of the case, state in writing to the inmate and the Board the reasons for the establishment of any increase in the eligibility date which differs from the provisions of (e) and (g) above.

(i) When, in the opinion of the hearing officer or Board panel, a series of infractions resulted from a single transaction, any increases in an inmate's eligibility date required pursuant to this section for such infractions shall be deemed to run concurrently.

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

10A:71-3.8 Public notice; adult inmates

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

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

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

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

(b) added.

Case Notes

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

10A:71-3.9 Inmate statements; adult inmates

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

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

(c) Such statement shall be filed within 15 days of the date the inmate receives his or her copy of such report, unless the inmate requests and receives a postponement of the hearing process pursuant to N.J.A.C. 10A:71-3.51.

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).

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

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

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

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 an offense 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; 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.

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; the failure to cooperate in his or her own rehabilitation; or the reasonable expectation that he or she will violate conditions of parole.

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

In (b), substituted "an offense" for "a crime" in 1, and inserted references to the inmate's failure to cooperate in his or her own rehabilitation, in 9 and 17.

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:71-3.51.

(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).

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

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

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

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

(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 date 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 is authorized to make an appropriate reduction in the future eligibility term previously established by the three-member Board panel or the Board; 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.
Amended by R.2005 d.127, effective April 18, 2005.
See: 36 N.J.R. 4407(a), 37 N.J.R. 1191(b).

In (f), rewrote the second sentence in 2iii.

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, designated Board staff 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.

Amended by R.2008 d.168, effective June 16, 2008.
See: 39 N.J.R. 5049(a), 40 N.J.R. 3726(b).

In (c), substituted "designated Board staff" for "the juvenile Board panel".

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 and individual or group counseling.

9. Statements by institutional staff, with supporting documentation, that the inmate, if released, is likely to cause injury to persons or substantial injury to property.

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

11. Documented change 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 relationships at the time of the case review.

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, if released, will cause injury to persons or substantial injury to property.

18. History of employment and education.

19. Family history.

20. Statement by the court reflecting the reasons for the commitment.

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.

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

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

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

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

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

(b)21 and 22 added.

Recodified from N.J.A.C. 10A:71-3.24, effective March 5, 1990.

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

10A:71-3.27 Quarterly review procedures; juvenile inmates

(a) Quarterly reviews shall be conducted by a hearing officer, a juvenile Board panel member or the juvenile

Board panel as determined by the Chairperson and shall include a personal interview with the juvenile inmate.

(b) The purpose of the quarterly review shall be to determine whether it appears that the juvenile inmate, when released, will not cause injury to persons or substantial injury to property, to determine whether the tentative parole release date will be reduced pursuant to N.J.A.C. 10A:71-3.24(a), (b) or (c), or to determine whether the tentative parole release date will be increased pursuant to N.J.A.C. 10A:71-3.24(d).

(c) The hearing officer, juvenile Board panel member or juvenile Board panel may consider any relevant and reliable documents or statements.

(d) Prior to the evaluation segment of the quarterly review, a designated Board representative, the hearing officer, or the juvenile Board panel member(s) shall discuss with and explain to the juvenile inmate all documents relevant to the juvenile inmate's case, except information classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or the rules and regulations of the Commission.

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

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

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

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

Section substantially amended.

(c) recodified to 3.26.

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

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

Deleted text in (b) "juvenile inmate's case ..." and inserted new "tentative parole 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:71-3.25; internal N.J.A.C. cites changed.

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

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

In (d), substituted "Commission" for "Department".

10A:71-3.28 Preparation of progress reports; juvenile inmate

(a) Prior to a quarterly or annual review, it shall be the responsibility of the chief executive officer of the institution or designee to prepare and file with the hearing officer or juvenile Board panel a report concerning the juvenile inmate.

(b) The report shall include the following:

1. The commitment order(s), including any written reasons for the commitment;

2. The predisposition report(s);

3. An appraisal of the inmate's institutional housing, work, education and program participation;

4. An investigative report by the assigned parole officer on the inmate's parole plans;

5. An up-to-date report on any outstanding detainee(s);

6. A complete report on the juvenile inmate's social, physical and mental condition, including any psychological or psychiatric reports and any additional reports requested by the juvenile Board panel member(s) or hearing officer;

7. Any additional information pertaining to the likelihood that the juvenile inmate, if released, will cause injury to persons or substantial injury to property;

(c) The reviewing juvenile Board panel member(s) shall submit such progress report and any other documents deemed relevant or necessary with the notification of reduction in the tentative parole release date or certification of parole release to the sentencing court in those cases in which court approval is required. Additional information or documents shall be submitted to the sentencing court upon the request of the sentencing court.

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

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

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

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

Recodified with substantial amendments from N.J.A.C. 10A:71-3.25(e).

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; deleted text from (a)5 and substituted new.

Recodified from N.J.A.C. 10A:71-3.26, effective March 5, 1990.

See: 21 N.J.R. 3411(c), 22 N.J.R. 825(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 (b)4, substituted "assigned parole officer" for "Bureau of Parole".

10A:71-3.29 Quarterly review notice of decision: juvenile inmates

(a) At the conclusion of the quarterly review conducted by a hearing officer, the hearing officer shall:

1. Recommend to a member of the juvenile Board panel that the juvenile inmate be released on parole; or
2. Defer a recommendation pending receipt of additional information; or
3. Continue the case until the next quarterly review; or
4. Recommend a decrease in the tentative parole release date in accordance with N.J.A.C. 10A:71-3.24(a), (b) or (c); or
5. Recommend an increase in the tentative parole release date in accordance with N.J.A.C. 10A:71-3.24(d); or
6. Refer the case to the juvenile Board panel.

(b) The hearing officer, at the conclusion of the quarterly review, shall immediately advise the juvenile inmate in writing of the determination and submit the written determination to the assigned member(s) of the juvenile Board panel.

(c) If the hearing officer defers a decision, the juvenile inmate and the assigned member(s) of the juvenile Board panel shall be advised in writing of the decision upon being rendered by the hearing officer.

(d) If the hearing officer recommends the juvenile inmate's release on parole, the juvenile inmate shall be advised of any special conditions recommended.

(e) At the conclusion of the quarterly review conducted by a juvenile Board panel member, the juvenile Board panel member shall render a determination(s) as provided in N.J.A.C. 10A:71-3.30(a).

(f) The provisions of N.J.A.C. 10A:71-3.30(b), (c) and (d) shall apply to those cases in which the quarterly review is conducted by a juvenile Board panel member.

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

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

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

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

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

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

Added (e) and (f).

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:71-3.27; N.J.A.C. cites changed.

10A:71-3.30 Board member review; juvenile inmates

(a) Upon review of the recommendation of the hearing officer, the assigned member of the juvenile Board panel shall render the following determination(s);

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

(b) A written report shall be filed with the juvenile Board panel within 21 days of the decision and shall consist of the determination of the juvenile Board panel member and the reasons therefor, except that information classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or the rules and regulations of the Commission. A copy of such notice shall be forwarded to the juvenile inmate, the juvenile's parent(s) or guardian(s), the committing court, the prosecutor, and the chief executive officer of the institution or designee. The chief executive officer or designee may further distribute the report as deemed appropriate.

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

(d) 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 assigned member of 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 any other document 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 member 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 this section.

4. If the sentencing court does not approved the reduction in the tentative parole release date, the tentative 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 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 tentative parole release of the juvenile inmate on the specified date, the juvenile inmate shall be released on parole on the previously established and approved 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 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 shall 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.

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

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

Section 3.27 recodified to 3.29.

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

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

Deleted text "or juvenile board panel member".

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

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

Added the word tentative.

Amended by R.1989 d.151 effective March 20, 1989.

See: 20 N.J.R. 2129(a), 21 N.J.R. 767(a).

Erroneous text at (a)4. and 8. deleted; 5. renumbered as 4., 7. renumbered as 5. to correct text.

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:71-3.28; internal N.J.A.C. cites changed.

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), substituted "Commission" for "Department".

10A:71-3.31 In absentia quarterly reviews: juvenile inmates

(a) When a juvenile inmate is physically unable to appear at a quarterly or case review or if a juvenile inmate refuses to appear at a quarterly or case review, the hearing officer, juvenile Board panel member or juvenile Board panel, upon the chief executive officer of the institution or designee providing in writing a reasonable explanation for the juvenile inmate's inability or refusal to appear, may either consider the case in the juvenile inmate's absence or conduct an in person review where the juvenile inmate is currently located.

(b) If a mental competency examination has certified that the juvenile 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 juvenile inmate.

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

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

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

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

Section recodified with amendments from 3.27.

Recodified from N.J.A.C. 10A:71-3.29, effective March 5, 1990.

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

10A:71-3.32 Juvenile Board panel case reviews

(a) Each juvenile inmate shall be scheduled for a comprehensive case review by the juvenile Board panel or a juvenile Board panel member during the twelfth month following the establishment of the tentative parole release date and yearly thereafter instead of the quarterly review otherwise required pursuant to N.J.A.C. 10A:71-3.25(a). A schedule of such case reviews shall be established in accordance with the provisions of N.J.A.C. 10A:71-3.25(a).

(b) A case review by the juvenile Board panel may be conducted by videoconferencing. The notice required pursuant to N.J.A.C. 10A:71-3.25(a)2 may include, when appropriate, notice that the scheduled case review by the juvenile Board panel will be conducted by videoconferencing.

(c) The purpose of such case review shall be to monitor the cumulative progress of the juvenile inmate, to determine whether it appears that the juvenile inmate, when released, will not cause injury to persons or substantial injury to property, to determine the reasons for the continued confinement of the juvenile inmate, to determine whether the previously established tentative parole release date will be reduced pursuant to N.J.A.C. 10A:71-3.24(a), (b) or (c) and to determine whether the previously established tentative parole date will be increased pursuant to N.J.A.C. 10A:71-3.24(d).

(d) At the conclusion of the case review conducted by a juvenile Board panel member, the juvenile Board panel member shall recommend an action(s) as provided in (f) below.

1. The juvenile Board panel member shall immediately advise the juvenile inmate in writing of the determination and submit the written determination to a member of the juvenile Board panel for review.

2. If the juvenile Board panel member defers a decision, the juvenile inmate and the reviewing member of the juvenile Board panel shall be advised in writing of the determination upon being rendered.

3. If the juvenile Board panel member recommends the juvenile inmate's release on parole, the juvenile inmate shall be advised of any special conditions recommended.

(e) If the reviewing juvenile Board panel member concurs with the recommendation of the juvenile Board panel member, the determination shall be deemed to be the decision of the juvenile Board panel. The juvenile Board panel shall file a report pursuant to (g) below.

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

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

1. A certification of:

- i. A parole release date;

- ii. Appropriate additional pre-release condition(s); and

- iii. Appropriate special parole condition(s) pursuant to N.J.A.C. 10A:71-6 when the parole release date is within 90 days.

2. Defer decision pending receipt of relevant information;

3. Certify a reduction in the tentative parole release date pursuant to N.J.A.C. 10A:71-3.24(a), (b) or (c).

4. Certify an additional reduction in the tentative parole release date in an amount deemed appropriate;

5. Certify an increase in the tentative parole release date pursuant to N.J.A.C. 10A:71-3.24(d); or

6. Continue the case until the next quarterly review.

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

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

(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.

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

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

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

Recodified with amendments from 3.28.

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

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

Added tentative.

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

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

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

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

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

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

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(h).

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

In (g), amended the N.J.A.C. reference.

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);

8. A report on the inmate's institutional adjustment, conduct and program participation including housing, work, educational or vocational training;

9. A report on the inmate's parole plan, when available;

10. The recommendation or comments of the chief executive officer or designee at their discretion;

11. Any other information reflecting on the likelihood that the inmate will commit a crime if released on parole;

12. The inmate's credit earning pattern as established by the chief executive officer or designee.

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

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

Recodified from N.J.A.C. 10A:71-3.33, effective March 5, 1990.

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

Recodified from 10A:71-3.35 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:71-3.37.

10A:71-3.37 Inmate statements: county inmates

(a) It shall be the responsibility of the chief executive officer of the institution or designee to provide each inmate with a copy of the report filed pursuant to N.J.A.C. 10A:71-3.36 at the time such report is filed with the designated hearing officer or Board panel, except such information classified as confidential by the Board pursuant to N.J.A.C. 10A:71-2.1 or by the chief executive officer of the institution.

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

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

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

Recodified from N.J.A.C. 10A:71-3.34, effective March 5, 1990.

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

Recodified from 10A:71-3.36 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:71-3.38.

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

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

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

10A:71-3.38 Purpose of parole hearing; county 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 this State 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.

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

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

Recodified from N.J.A.C. 10A:71-3.35, 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:71-3.37 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:71-3.39.

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; and added (b).

10A:71-3.39 Factors considered at parole hearings: county 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 persons or agencies which have knowledge of the inmate.

(b) The hearing officer, Board panel or Board shall consider those factors as specified in N.J.A.C. 10A:71-3.11 and any other factor(s) deemed relevant.

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

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

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

Recodified from N.J.A.C. 10A:71-3.36, effective March 5, 1990.

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

Recodified from 10A:71-3.38 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:71-3.40.

10A:71-3.40 In absentia hearings: county inmates

The provisions of N.J.A.C. 10A:71-3.12 shall be applicable in the cases of 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).

Recodified from N.J.A.C. 10A:71-3.37, effective March 5, 1990.

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

Recodified from 10A:71-3.39 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:71-3.41.

10A:71-3.41 Parole hearing procedures: county inmates

(a) The parole hearing provisions of N.J.A.C. 10A:71-3.13, except subsection (c), shall be applicable in the cases of county inmates.

(b) All information not classified as confidential pursuant to N.J.A.C. 10A:71-2.1 or by the chief executive officer of the institution shall be disclosed to the inmate.

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

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

Recodified from N.J.A.C. 10A:71-3.38, effective March 5, 1990.

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

Recodified from 10A:71-3.40 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:71-3.42.

10A:71-3.42 Scheduling of initial parole hearings; county inmates

(a) The Chairperson shall establish a schedule of parole hearings to be conducted by a hearing officer assigned or designated by the Chairperson.

(b) Except as provided in N.J.A.C. 10A:71-3.51, such hearings shall be conducted at least 21 days in advance of the inmate's parole eligibility date or as soon as administratively feasible.

(c) The Chairperson or designee, when practicable, shall notify the chief executive officer of the institution or designee of the schedule of such hearings at least seven days prior to the hearings.

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

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

(g) An initial parole hearing may be conducted by videoconferencing. The notice required by (c) above may include, when appropriate, notice that the scheduled initial parole hearing will be conducted by videoconferencing.

New Rule, R.1985 d.213, effective May 6, 1985.
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).
Recodified from N.J.A.C. 10A:71-3.39 and amended by R.1990 d.141, effective March 5, 1990.
See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).
Internal N.J.A.C. cite changed.
Recodified from 10A:71-3.41 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:71-3.43.
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).
Added (g).

10A:71-3.43 Initial hearing notice of decision; county inmates

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

1. Recommend 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 30 days in order to obtain relevant information.

(b) At the time of the hearing, the hearing officer shall issue a written case assessment to the inmate, the chief executive officer of the institution or designee, the Division of Parole and the appropriate Board panel.

(c) 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 by the chief executive officer of the institution.

(d) 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 conditions recommended.

New Rule, R.1985 d.213, effective May 6, 1985.
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).
Recodified from N.J.A.C. 10A:71-3.40, effective March 5, 1990.
See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).
Recodified from 10A:71-3.42 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:71-3.44.
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"; in (b), substituted "Division" for "Bureau".

10A:71-3.44 Board member review; county inmates

(a) When the hearing officer recommends that an inmate be released on parole, the Chairperson shall assign a member of the appropriate Board panel to review such recommendation. In cases of offenders serving sentences for crimes of the first and second degree, such recommendation shall be reviewed by two members of the appropriate Board panel or one Board member of the appropriate panel and one hearing officer.

(b) If such Board member(s) or one Board member of the appropriate panel and one hearing officer concurs with the recommendation of the hearing officer, the Board member(s) or one Board member and one hearing officer shall certify parole release as soon as practicable after the parole eligibility date by:

1. Establishing a specific parole release date as soon after the inmate's actual parole eligibility date as practicable; and
2. Establishing appropriate pre-release conditions; and
3. Establishing appropriate special parole conditions pursuant to N.J.A.C. 10A:71-6; and

(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 (c), 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 6.

(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 corrections compact cases, the Department shall when directed by the Board 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).

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

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

In (d), amended the N.J.A.C. reference; in (h), inserted "corrections" following "interstate" and substituted "when directed by the Board" for "on behalf of the Board".

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

1. Whether the offender shall be required to serve the remainder of the term in custody and shall not be eligible for parole consideration on the remainder of the term;

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

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

(j) If the Board panel determines pursuant to (i)1 above that the offender shall be required to serve the remainder of the term in custody and shall not be eligible for parole consideration on the remainder of the term, the Board panel shall state in writing to the inmate the reasons therefor.

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

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

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

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

(o) If an offender sentenced to N.J.S.A. 2C:43-7.2 is also sentenced to a special sentence of community supervision for life or parole supervision for life pursuant to N.J.S.A. 2C:43-6.4 and if the offender is released on parole by a Board panel or the Board prior to the expiration of the sentence of incarceration, the conditions of supervision shall include, in addition to those conditions established pursuant to N.J.A.C. 10A:7-6.4(a) and (i) and (e)2 above, the conditions as specified in N.J.A.C. 10A:71-6.11(b), (c), (e), (f) and (g) or 6.12(d), (e), (g), (h) and (i), as appropriate.

New Rule, R.1998 d.391, effective August 3, 1998.
See: 30 N.J.R. 1176(a), 30 N.J.R. 2920(a).
Amended by R.2000 d.50, effective February 7, 2000.
See: 31 N.J.R. 3579(a), 32 N.J.R. 472(b).

In (g), (k) and (l), changed N.J.A.C. references.
Amended by R.2002 d.175, effective June 3, 2002.
See: 34 N.J.R. 359(a), 34 N.J.R. 1918(b).

Rewrote (a); in (e)4, deleted "the Bureau of Parole or" following "representative of" and "as appropriate" following "Board"; in (f), deleted "Bureau of Parole or" following "representative of the" and "as appropriate," following "Board".
Amended by R.2005 d.127, effective April 18, 2005.
See: 36 N.J.R. 4407(a), 37 N.J.R. 1191(b).

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

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

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

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

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 Appeals by inmates

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

1. The Board panel failed to consider material facts.

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

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

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

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

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

5. A Board member participating in the deliberations or disposition of the case has a demonstrable personal interest

or demonstrated prejudice or bias in the case which affected the decision.

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

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

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

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

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

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

(c) Any conditions of parole or pre-parole requirements established by a Board member or a Board panel shall be appealable to the appropriate Board panel or the Board, respectively, provided one of the following criteria is met:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Added (i).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Added (i).

Petition for Rulemaking.

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

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

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

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

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

Case Notes

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

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

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

For parole board's finding of substantial likelihood as to whether inmate will commit another crime if paroled to be sustained, finding must

be supported by credible evidence in whole record. New Jersey State Parole Bd. v. Cestari, 224 N.J.Super. 534, 540 A.2d 1334 (A.D.1988), certification denied 111 N.J. 649, 546 A.2d 558.

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

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

10A:71-4.2 Appellate procedure

(a) All appeals submitted pursuant to N.J.A.C. 10A:71-4.1 shall be filed in writing and within 180 days of written notice action or decision being received by the inmate and shall contain the reasons for the appeal and the criteria under which the appeal is submitted. An appeal submitted pursuant to N.J.A.C. 10A:71-4.1(i) (failure to provide timely Board panel hearing) shall include reference to the inmate's actual parole eligibility date as established by the Board's staff.

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

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

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

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

(f) The Board panel, Board or Chairperson, as appropriate, may affirm, modify or reverse the decision being appealed, or may remand the case to the Board's staff, hearing officer, Board member or Board panel for further consideration.

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

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

Added "chairperson".

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

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

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

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

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

Petition for Rulemaking.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In (b)1, added "In the case of an inmate serving a sentence for an offense committed prior to August 19, 1997," at the beginning of ii, inserted a new iii, and recodified former iii through v as iv through vi. Recodified from N.J.A.C. 10A:71-4.4 and amended by R.2008 d.168, effective June 16, 2008.

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

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

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

10A:71-4.4 (Reserved)

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

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

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

SUBCHAPTER 5. SUSPENDING OR RESCINDING A PAROLE RELEASE DATE

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

(a) Any suspension by the Chairperson or a designated representative of a parole release date shall act to prohibit the release of the inmate by the Department or Commission on the original parole release date unless such suspension is subsequently vacated.

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

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

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

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

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

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

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

In (a), inserted reference to Commission.

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

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

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

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

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

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

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

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

(b) and (c) substantially amended.

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

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

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

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

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

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

10A:71-5.3 Alteration of parole eligibility

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

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

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

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

Section substantially amended.

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

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

10A:71-5.4 Pre-release conditions

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

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

10A:71-5.5 Rescinding a parole release date

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

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

Case Notes

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

10A:71-5.6 Parole rescission hearing; scheduling

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

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

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

(d) If the inmate requests a postponement of the rescission hearing, the postponement shall be granted by the 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/man-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 Compact for Adult Offender Supervision (N.J.S.A. 2A:168-26 et seq.), the Interstate Compact on Juveniles (N.J.S.A. 9:23-1 et seq.) or the Witness Security Reform Act (18 U.S.C. §§ 3251 et seq.), all adult and juvenile parolees released from an adult correctional facility shall at all times be under the supervision of the Division of Parole and juvenile parolees released from a juvenile correctional facility shall at all times be under the supervision of the Commission in accordance with the policies and rules of the Board.

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

(c) In the case of a juvenile, supervision shall also continue during the term of post incarceration imposed pursuant to N.J.S.A. 2A:4A-44(d)5 unless the juvenile Board panel determines that post incarceration supervision should be revoked and the juvenile returned to custody pursuant to the provisions of N.J.S.A. 30:4-123.59 to 30:4-123.65 and N.J.A.C. 10A:71-7.

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

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

Deleted the text "and payment of any fine".

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

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

In (a), amended N.J.S.A. references, inserted reference to Witness Security Reform Act, inserted "adult" preceding "parolees", and added provision relating to supervision of juvenile parolees; and added (c).
Amended by R.2002 d.175, effective June 3, 2002.

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

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

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

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

Rewrote (a).

10A:71-6.2 Supervisory procedures

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

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

10A:71-6.3 Certificate of parole

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Case Notes

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

10A:71-6.4 Conditions of parole

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

1. You are required to obey all laws and ordinances.
2. You are to report in person to your District Parole Supervisor or his or her designated representative, or the designated representative of the Commission, immediately after you are released on parole from the institution, unless you have been given other written instructions by a designated representative of the Board or Commission, and you are to report thereafter as instructed by the District Parole Supervisor or his or her designated representative, or the designated representative of the Commission.
3. You are to notify 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. Prior to any change in your residence.
 - 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 Division 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.

15. You are to immediately notify your parole officer of any change in your employment status.

16. You are to submit to a search conducted by a parole officer, without a warrant of your person, place of residence, vehicle or other real or personal property within your control at any time a parole officer has a reasonable, articulable basis to believe that the search will produce contraband or evidence that a condition of supervision has been violated, is being violated or is about to be violated and permit the confiscation of any contraband.

17. Pursuant to N.J.S.A. 30:4-123.88, the State Parole Board, on at least an annual basis, may administer a polygraph examination to all offenders serving a special sentence of community or parole supervision for life. You shall submit to a polygraph examination as directed by the District Parole Supervisor if you are serving a sentence for an offense enumerated in N.J.S.A. 2C:43-6.4.

(b) In the case of an adult or young adult state inmate subject to the provisions of N.J.S.A. 2C:43-6.4, the certificate of parole shall contain as general conditions of parole, in addition to those conditions specified in (a) above, the conditions as specified in N.J.A.C. 10A:71-6.11(b), (c), (e), (f) and (g) or 6.12(d), (e), (g), (h) and (i) as appropriate.

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

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

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

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

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

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

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

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

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

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

(h) Nothing in this section shall prohibit the Board members from imposing as a specific condition of parole that the parolee notify an employer or intended employer of his or her

parole status and criminal record where good cause exists to impose such a specific condition.

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

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

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

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

4. An additional special condition imposed pursuant to this subsection shall remain in effect until modified or vacated by the District Parole Supervisor, an Assistant District Parole Supervisor, the designated representative of the District Parole Supervisor or the designated representative of the Commission or modified or vacated by the Board panel pursuant to N.J.A.C. 10A:71-6.6.

(j) A District Parole Supervisor, an Assistant District Parole Supervisor, the designated representative of the District Parole Supervisor or the designated representative of the Commission may, under the circumstances specified in (f) above, impose as a special condition that the parolee notify an employer or intended employer of his or her parole status and criminal record. Imposition of the special condition shall be in accordance with the provisions of (i) above. However, the special condition shall not be deemed effective until affirmed by the appropriate Board panel.

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

(l) 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).

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

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

Rewrote the section.

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

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

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

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 interstate compact for adult offender supervision (N.J.S.A. 2A:168-26 et seq.) and the interstate compact for juveniles (N.J.S.A. 9:23B-1 et seq.) if the Board panel is satisfied that such change will not result in a substantial likelihood that the parolee will commit an offense, which would be a crime under the laws of this State.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10A:71-6.11 Community supervision for life

(a) Pursuant to N.J.S.A. 2C:43-6.4(a), any enumerated offense committed prior to January 14, 2004, a court imposing sentence on a person who has been convicted of aggravated sexual assault, sexual assault, aggravated criminal sexual contact, kidnapping pursuant to N.J.S.A. 2C:13-1(c)2,

endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child pursuant to N.J.S.A. 2C:24-4(a), luring or an attempt to commit any such offense shall include, in addition to any sentence authorized by the Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq., a special sentence of community supervision for life.

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

1. Obey all laws and ordinances;
2. Report to the assigned parole officer as instructed;
3. Notify the assigned parole officer 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 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, business or volunteer 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. 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.;

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

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

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

(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, and if the appropriate court affirms the determination of the county prosecutor, 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, and if the appropriate court affirms the determination of the county prosecutor, the offender serving a special sentence of community supervision for life shall refrain from the use of alcohol, in addition to the conditions specified in (b), (c), (e) and (f) above.

(h) 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.

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

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

(k) 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.

(l) 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.

(m) 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.

(n) 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).

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

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

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

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

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

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

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

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

Inserted (b)22.

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

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

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

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

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

Rewrote the section.

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

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

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

Case Notes

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

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

10A:71-6.12 Parole supervision for life

(a) Pursuant to N.J.S.A. 2C:43-6.4(a), any enumerated offense committed on or after January 14, 2004, a court imposing sentence on a person who has been convicted of aggravated sexual assault, aggravated criminal sexual contact, kidnapping pursuant to N.J.S.A. 2C:13-1(c)2, engaging in sexual conduct which would impair or debauch the morals of a child pursuant to N.J.S.A. 2C:24-4(a), endangering the welfare of a child pursuant to N.J.S.A. 2C:24-4(b)3, luring or an attempt to commit any of these offenses shall include, in addition to any sentence authorized by the Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq., a special sentence of parole supervision for life.

(b) The special sentence of parole supervision for life shall commence pursuant to N.J.S.A. 2C:43-6.4(b) immediately upon the offender's release from incarceration. If the offender is serving a sentence of incarceration for another offense at

the time the offender completes the custodial portion of the sentence imposed on the present offense, the special sentence of parole supervision for life shall not commence until the offender is actually released from incarceration for the other offense.

(c) Pursuant to N.J.S.A. 2C:43-6.4(b), an offender sentenced to a special sentence of parole supervision for life shall remain in the legal custody of the Commissioner. The of-

fender shall be supervised by the Division of Parole and shall be subject to the provisions and conditions established pursuant to (d) below; subject to any special conditions established by the appropriate Board panel; and subject to any conditions imposed by the sentencing court.

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

1. Obey all laws and ordinances;
 2. Report to the assigned parole officer as instructed;
 3. Notify the assigned parole officer 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 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, business or volunteer activity and prior to a change of employment;
 15. Notify the assigned parole officer immediately of any change in employment status;
 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. 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.;
 19. Refrain from operating a motor vehicle without a valid driver's license;
 20. Refrain from any contact (written or otherwise) with any group, club, association or organization that engages in, promotes or encourages illegal or sexually deviant behavior;
 21. Submit to a search conducted by a parole officer, without a warrant, of the offender's person, place of residence, vehicle or other real or personal property within the offender's control at any time a parole officer has a reasonable, articulable basis to believe that the search will produce contraband or evidence that a condition of supervision has been violated, is being violated or is about to be violated and permit the confiscation of any contraband;
 22. Make payment to the Division of Parole of any assessment, fine, penalty or restitution imposed by the sentencing court; and
 23. Pursuant to N.J.S.A. 30:4-123.88, the State Parole Board, on at least an annual basis, may administer a polygraph examination to all offenders serving a special sentence of parole supervision for life. You shall submit to a polygraph examination as directed by the District Parole Supervisor.
- (e) If the victim(s) of an offense specified in (a) above is a minor, an offender serving a special sentence of parole supervision for life shall, in addition to the conditions specified in (d) above, be subject to the following conditions. The offender shall:
1. Refrain from initiating, establishing or maintaining contact with any minor;
 2. Refrain from attempting to initiate, establish or maintain contact with any minor; and
 3. Refrain from residing with any minor without the prior approval of the assigned parole officer.

(f) The following circumstances are deemed exceptions to the conditions specified in (e) 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.

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

(h) If the sentencing court determines that the conduct of the person convicted of an offense specified in (a) above was characterized by a pattern of repetitive and compulsive behavior and 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 and the appropriate court affirms the determination of the county prosecutor, the offender serving a special sentence of parole supervision for life shall, in addition to the conditions specified in (d), (e) and (g) above, 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.

(i) If the sentencing court determines that the conduct of the person convicted of an offense specified in (a) above was characterized by a pattern of repetitive and compulsive behavior and if upon release from confinement the appropriate county prosecutor determines pursuant to N.J.S.A. 2C:7-8 that the offender is a high risk to re-offend and the appropriate court affirms the determination of the county prosecutor, the offender serving a special sentence of parole supervision for life shall, in addition to the conditions specified in (d), (e), (g) and (h) above, refrain from the use of alcohol.

(j) Prior to an offender, subject to the provision of N.J.S.A. 2C:43-6.4, being released from custody at the expiration of the term of incarceration or being terminated

from parole supervision, the appropriate Board panel shall issue a written certificate which shall be delivered to the offender by a designated representative of the Board.

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

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

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

(n) 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.

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

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

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

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

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

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

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

1. Eighteen months if the offender has committed a crime of the first degree;
2. Sixteen months if the offender has committed a crime of the second degree; or
3. Fourteen months if the offender has committed a crime of the third degree;
4. Twelve months if the offender has committed a crime of the fourth degree or any other offense, or violated any other condition of supervision.

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

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

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

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

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

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

New Rule, R.2005 d.127, effective April 18, 2005.

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

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

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

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

10A:71-6.13 Polygraph examinations

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

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

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

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

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

SUBCHAPTER 7. REVOCATION OF PAROLE

10A:71-7.1 Commencement of revocation proceedings

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

10A:71-7.2 Issuance of warrants

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Added (e).

Case Notes

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

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

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

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

10A:71-7.3 Motion for accelerated revocation

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

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

1. Such application shall include:

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

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

- i. A concise, comprehensive synopsis of the specific facts, statements or other evidence implicating the parolee in the commission of the alleged crime; and
- ii. An affirmative representation that the case is not subject to any plea agreement which may result in the imposition of a non-custodial term or a custodial term of less than one year.

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

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

(d) Upon review of the application and chronological supervision report, a determination shall be made by the Chairperson and a designated Board member or a designated two-member Board panel as to whether the charges against the parolee are of a serious nature, whether the parolee otherwise poses a danger to public safety and whether the

revocation process shall be initiated. The Chairperson or his or her designated representative shall advise the prosecuting authority, the Director of Parole or his or her designee or the Commission and the District Parole Supervisor or the designated representative of the Commission, as appropriate, as to whether the revocation process shall or shall not be initiated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10A:71-7.4 Preliminary hearing

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

10A:71-7.5 Preliminary hearing; scheduling

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

10A:71-7.16B (Reserved)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Upon revocation of parole for the commission of a crime while on parole, an adult inmate:

1. Who has committed a fourth degree crime shall serve not less than eight nor more than 12 months except as provided in (g) and (p) below and N.J.A.C. 10A:71-3.2;

2. Who has committed a third degree crime shall serve not less than 12 nor more than 16 months except as provided in (g) and (p) below and N.J.A.C. 10A:71-3.2;

3. Who has committed a second degree crime shall serve not less than 16 nor more than 28 months except as provided in (g) and (p) below and N.J.A.C. 10A:71-3.2;

4. Who has committed a first degree crime shall serve not less than 28 nor more than 48 months except as provided in (g) and (p) below and N.J.A.C. 10A:71-3.2;

5. Who has committed the crimes of murder or kidnapping shall serve not less than four years, eight months nor more than eight years, four months except as provided in (g) and (p) below and N.J.A.C. 10A:71-3.2;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(p) A three-member Board panel may establish a future parole eligibility date which differs from that otherwise required by the provisions of this section if the future parole eligibility date or, in the case of a juvenile inmate, a future parole release date, which would otherwise be established

pursuant to this section is clearly inappropriate in consideration of the circumstances of the parole violation and the characteristics and prior criminal record of the parolee.

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

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

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

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

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

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

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

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

8. The Board's establishment of a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date shall be based on the review of the record. Upon disposition of the case, the Board shall state in writing to the inmate and the inmate's attorney the reasons for the establishment of a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date; which differs from that otherwise required by the provisions of this section.

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

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

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

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

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

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

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

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

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

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

Substantially amended.

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

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

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

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

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

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

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

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

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

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

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

In (b)1, inserted reference to a designated representative of the Commission.

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

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

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

Administrative correction.

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

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

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

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

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).

Case Notes

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

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

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

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

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

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

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

iii. Establishing appropriate special parole conditions.

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

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

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

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

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

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

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

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

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

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

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

(g) Upon revocation of parole for the commission of a crime while on parole, an adult inmate:

1. Who has committed a fourth degree crime shall serve not less than eight nor more than 12 months except as provided in (h) and (q) below and N.J.A.C. 10A:71-3.2;

2. Who has committed a third degree crime shall serve not less than 12 nor more than 16 months except as provided in (h) and (q) below and N.J.A.C. 10A:71-3.2;

3. Who has committed a second degree crime shall serve not less than 16 nor more than 28 months except as provided in (h) and (q) below and N.J.A.C. 10A:71-3.2;

4. Who has committed a first degree crime shall serve not less than 28 nor more than 48 months except as provided in (h) and (q) below and N.J.A.C. 10A:71-3.2;

5. Who has committed the crimes of murder or kidnapping shall serve not less than four years, eight months nor more than eight years, four months except as provided in (h) and (q) below and N.J.A.C. 10A:71-3.2;

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

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

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

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

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

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

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

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

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

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

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

2. Except as provided in (j) and (q) below, a term of 10 months for the commission of a third degree crime;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The parolee has demonstrated a positive attitude to parole supervision.

2. The parolee was employed on a full-time basis.

3. The parolee's living arrangement was stable and supportive.

4. The parolee was under parole supervision for a period of at least two years.

5. The parolee has previously adjusted successfully to parole supervision.

6. The parolee has no previous convictions.

7. The parolee's original sentence was for a non-violent offense.

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

1. The parolee has demonstrated a negative attitude to parole supervision.

2. The parolee was under parole supervision for a period of less than six months.

3. The parolee has previous parole failures.

4. The parolee has extensive prior convictions.

5. The parolee has violated more than one parole condition.

6. The parolee was guilty of substance abuse while on parole.

7. The parolee's original sentence was for a violent offense.

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

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

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

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

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

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

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

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

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

8. The Board's establishment of a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date shall be based on the review of the record. Upon disposition of the case, the Board shall state in writing to the inmate and the inmate's attorney the reasons for the establishment of a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date, which differs from that otherwise required by the provisions of this section.

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

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

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

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

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

Administrative Correction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rewrote (g).

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

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

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

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

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

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

iii. Establishing appropriate special parole conditions.

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

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

ii. Failure to notify the parole officer immediately upon the issuance of an order granting emergency relief, a temporary or final restraining order or an order establishing conditions of release or bail in a criminal matter or offense arising out of a domestic violence situation. Failure to comply with any condition established within the respective order until the order is dissolved by the appropriate court or until a condition is modified or discharged by the appropriate court, N.J.A.C. 10A:71-6.4(a)4;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. The Board's establishment of a future parole eligibility date or, in the case of a juvenile inmate, a future parole release date shall be based on the review of the

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

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

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

(r) If an inmate's maximum sentence will expire prior to the parole release date that could be established pursuant to (a)2 above, the future parole eligibility date that could be established pursuant to (a)3, (b), (c), (d), (f), (g) or (h) above or the future parole release date that could be established pursuant to (i) or (j) above, the appropriate Board panel may direct that such inmate serve his or her maximum sentence and not be eligible for parole consideration on the balance of the maximum sentence.

New Rule, R.1995 d.614, effective December 4, 1995.

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

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

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

In (a)3i, inserted reference to a designated representative of the Commission.

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

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

In (a)2 and 3, changed N.J.A.C. references throughout.

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

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

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

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

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

Rewrote (e).

10A:71-7.18 Revocation hearing; notice of decision

(a) Within 21 days of the revocation hearing, the appropriate Board panel shall issue a written Notice of Decision to the parolee and the parolee's attorney, the District Parole Supervisor or designated representative of the Commission, as appropriate, the Department or Commission, as appropriate, and the Board.

(b) Such Notice of Decision shall consist of:

1. The decision of the Board panel;

2. The particular reasons for the decision and the facts relied upon, except information classified as confidential by the Board pursuant to N.J.A.C. 10A:71-2.1; and

3. The future parole eligibility date established pursuant to N.J.A.C. 10A:71-7.17, 7.17A or 7.17B.

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

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

Added text "and the parolee's attorney".

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

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

In (a), inserted reference to a designated representative of the Commission and to the Commission; and in (b)3, inserted additional N.J.A.C. references.

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

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

In (b)3, changed N.J.A.C. references. Former N.J.A.C. 10A:71-7.18, Adult Diagnostic and Treatment Center examination for sex offenders, recodified to N.J.A.C. 10A:71-7.19.

10A:71-7.18A (Reserved)

Recodified to N.J.A.C. 10A:71-7.19A by R.1999 d.252, effective August 2, 1999.

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

10A:71-7.19 Adult Diagnostic and Treatment Center examination for sex offenders

(a) If a parolee has been sentenced and paroled under provisions of the "Sex Offender Act," N.J.S.A. 2A:164-3 et seq., or N.J.S.A. 2C:47-1 et seq., and if the adult Board panel has revoked parole, a request for a complete examination, containing a copy of the hearing summary of the revocation hearing and the adult Board panel's Notice of Decision, shall be forwarded to the chief executive officer of the Adult Diagnostic and Treatment Center.

(b) The adult Board panel, in cooperation with the chief executive officer of the Adult Diagnostic and Treatment Center, shall schedule such examination and forward written notice of the date, time and place of such examination to the parolee and the parolee's attorney and, when the parolee is in custody, to the chief executive officer of the institution of incarceration.

(c) Such examination shall be for the purpose of determining whether the violation(s) of the parole conditions reflects emotional or behavioral problems as a sex offender, evidence that the parolee is incapable of making an acceptable social adjustment in the community, and the necessity for continued custodial supervision and further specialized treatment as a sex offender.

(d) As soon as practicable upon completion of such examination, it shall be the responsibility of the chief executive officer of the Adult Diagnostic and Treatment Center to forward a written report of such examination to the adult Board panel.

(e) As soon as practicable upon completion of such examination, it shall be the responsibility of the chief executive officer of the Adult Diagnostic and Treatment Center to forward a written report of such examination to the prison Board panel.

(f) The adult Board panel shall forward a copy of such report to the parolee's attorney, or directly to the parolee where he or she has appeared pro se, provided said report is not classified as confidential by the rules and regulations of the Department, in order that the parolee or his or her attorney may object or comment on the report by submitting written exceptions. Such exceptions shall be forwarded to the adult Board panel within a reasonable period of time after the receipt of the report.

(g) If the Adult Diagnostic and Treatment Center staff determines that the following conditions exist, then the adult Board panel shall, if it concurs with the report, vacate its revocation of parole and release the inmate on parole as soon as practicable:

1. That the parolee's conduct does not reflect emotional or behavioral problems as a sex offender;
2. That there is no evidence that the parolee is incapable of making an acceptable social adjustment in the community; and
3. That the parolee's condition does not warrant continued custodial supervision and further specialized treatment as a sex offender.

(h) If the Adult Diagnostic and Treatment Center staff determines that the following conditions exist, the adult Board panel shall affirm the revocation of parole:

1. That the parolee's conduct does reflect emotional or behavioral problems as a sex offender;
2. That there is evidence that the parolee is incapable of making an acceptable social adjustment in the community; and
3. That the parolee's condition does warrant continued custodial supervision and further specialized treatment as a sex offender.

(i) An inmate who has had his parole revoked and who remains confined under the provisions of the "Sex Offender Act" shall be considered for parole by the adult Board panel upon the recommendation by the Special Classification Review Board that the inmate is capable of making an acceptable social adjustment in the community.

Amended by R.1980 d.434, effective October 7, 1980.

See: 12 N.J.R. 537(a), 12 N.J.R. 665(a).

(h) added.

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

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

Substantially amended.

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

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

In (a): deleted "psychiatric" from description of complete examination.

Recodified from N.J.A.C. 10A:71-7.18 by R.1999 d.252, effective August 2, 1999.

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

Former N.J.A.C. 10A:71-7.19, Withdrawal of parole warrants, recodified to N.J.A.C. 10A:71-7.20.

10A:71-7.19A Adult Diagnostic and Treatment Center examination for sex offenders; place of confinement; future parole eligibility

(a) This section applies to offenders who were sentenced to confinement in the Adult Diagnostic and Treatment Center under N.J.S.A. 2C:47-1 et seq. for an offense committed on or after December 1, 1998; who were paroled under the provisions of N.J.S.A. 2C:47-5(a); and who violate parole.

(b) If the adult Board panel has revoked parole, a request for a complete psychological examination, containing a copy of the hearing summary of the revocation hearing and the adult Board panel's Notice of Decision, shall be forwarded to the chief executive officer of the Adult Diagnostic and Treatment Center.

(c) The adult Board panel, in cooperation with the chief executive officer of the Adult Diagnostic and Treatment Center, shall schedule such examination and forward written notice of the date, time and place of such examination to the inmate and the inmate's attorney and to the chief executive officer of the institution in which the inmate is confined.

(d) Such examination shall be for the purpose of determining whether the violation(s) of the parole conditions reflects emotional or behavioral problems as a sex offender that cause the offender to be incapable of making any acceptable social adjustment in the community and, if so, to determine further the inmate's amenability to sex offender treatment and, if amenable, the inmate's willingness to participate in such treatment.

(e) No more than 30 days after the date of the examination, the chief executive officer of the Adult Diagnostic and Treatment Center shall forward a written report of the results of the examination to the adult Board panel.

(f) The adult Board panel shall forward a copy of such report to the inmate's attorney, or directly to the inmate where he or she has appeared pro se, provided said report is not classified as confidential by the rules of the Department, in order that the inmate or his or her attorney may object or comment on the report by submitting written exceptions. Such exceptions shall be forwarded to the adult Board panel within a reasonable period of time after the receipt of the report.

(g) Upon review of the report of the examination conducted pursuant to (b), (c) and (d) above and any exceptions to the report submitted by the inmate or the inmate's attorney, the adult Board panel shall determine whether to affirm the revocation of the inmate's parole. The inmate shall be notified in writing of the decision of the adult Board panel. Such notice shall also inform the inmate whether future parole eligibility will be pursuant to N.J.S.A. 2C:47-5(a) or N.J.S.A. 30:4-123.45 et seq. and any future parole eligibility date established pursuant to (h) below.

(h) The adult Board panel shall establish a future parole eligibility date pursuant to N.J.A.C. 10A:71-7.17B if the adult Board panel affirms the revocation of parole and if the report of the examination conducted pursuant to (b), (c) and (d) above reveals that the inmate's violation(s) of the parole conditions:

1. Does not reflect emotional or behavioral problems as a sex offender; or
2. Reflects emotional or behavioral problems as a sex offender that cause the inmate to be incapable of making any acceptable social adjustment in the community and further reveals that the inmate is not amenable to sex offender treatment.

(i) The offender shall be confined in the Adult Diagnostic and Treatment Center if the report of the examination conducted pursuant to (b), (c) and (d) above reveals that the inmate's violation(s) of the parole conditions reflects emotional or behavioral problems as a sex offender that cause the inmate to be incapable of making any acceptable social adjustment in the community and further reveals that the inmate is amenable to sex offender treatment and is willing to participate in such treatment. The inmate shall be eligible for parole pursuant to the provisions of N.J.S.A. 2C:47-5(a).

(j) The inmate shall be confined in a facility designated by the Commissioner pursuant to N.J.S.A. 30:4-91.2 if the report of the examination conducted pursuant to (b), (c) and (d) above reveals that the inmate's violation(s) of the parole conditions reflects emotional or behavioral problems as a sex offender that cause the inmate to be incapable of making any acceptable social adjustment in the community and further reveals that the inmate is amenable to sex offender treatment, but is not willing to participate in such treatment. The inmate shall be eligible for parole pursuant to the provisions of N.J.S.A. 2C:47-5(a).

(k) The inmate shall be confined in a facility designated by the Commissioner pursuant to N.J.S.A. 30:4-91.2 if the report of the examination conducted pursuant to (b), (c) and (d) above reveals that the inmate's violation(s) of the parole conditions:

1. Does not reflect emotional or behavioral problems as a sex offender; or

2. Reflects emotional or behavioral problems as a sex offender that cause the inmate to be incapable of making any acceptable social adjustment in the community and further reveals that the inmate is not amenable to sex offender treatment.

(l) An inmate confined pursuant to (k)1 or 2 above shall be eligible for parole pursuant to the provisions of N.J.S.A. 30:4-123.45 et seq. However, a parole eligibility date established pursuant to N.J.A.C. 10A:71-7.16B or a future parole eligibility date established pursuant to N.J.A.C. 10A:71-3.21 shall not be reduced by commutation time for good behavior pursuant to N.J.S.A. 30:4-140 or credits for diligent application to work and other institutional assignments pursuant to N.J.S.A. 30:4-92.

(m) If an inmate is confined pursuant to (j) or (k)2 above, the inmate may, on a biennial basis, request to be transferred to the Adult Diagnostic and Treatment Center. Within 90 days after receiving a request for transfer, the Department shall conduct a psychological examination. If, upon the completion of a psychological examination, the Department determines that the inmate is amenable to sex offender treatment and is willing to participate in such treatment, the Commissioner shall order the inmate to be transferred to the Adult Diagnostic and Treatment Center as soon as practicable. Upon being transferred to the Adult Diagnostic and Treatment Center, the inmate shall be eligible for parole pursuant to N.J.S.A. 2C:47-5(a).

(n) The provisions of this section shall apply to an inmate who was confined pursuant to (k)1 or 2 above; who was subsequently paroled pursuant to N.J.S.A. 30:4-123.45 et seq., and who, thereafter, violates parole.

New Rule, R.1999 d.189, effective June 7, 1999.

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

Recodified from N.J.A.C. 10A:71-7.18A by R.1999 d.252, effective August 2, 1999.

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

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

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

In (h), amended the N.J.A.C. reference.

10A:71-7.20 Withdrawal of parole warrants

(a) When a warrant for the arrest of a parolee is withdrawn, such warrant shall be immediately cancelled. Such cancellation shall not alter any forfeiture of time pursuant to N.J.S.A. 30:4-123.65.

(b) If the Board panel determines that a parole warrant was issued in error, upon withdrawal of such warrant the warrant shall be rescinded. Such rescission shall eliminate any forfeiture of time pursuant to N.J.S.A. 30:4-123.65.

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

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

Added "N.J.S.A.".

Recodified from N.J.A.C. 10A:71-7.19 by R.1999 d.252, effective August 2, 1999.

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

Former N.J.A.C. 10A:71-7.20, Revenue cases, recodified to N.J.A.C. 10A:71-7.21.

10A:71-7.21 Revenue cases

(a) For violation of a condition of parole requiring the payment of any assessment, fine, penalty, lab fee or restitution, the appropriate Board panel shall revoke parole only for failure or refusal by the parolee to make a good faith effort to make such payment.

(b) If a Board panel revokes parole pursuant to (a) above, the Board panel shall determine the length of time to be served; however, the term shall not exceed one day for each \$20.00 of the fine or penalty or restitution, nor 40 days if the fine or penalty or restitution was imposed upon a disorderly persons offense, nor 25 days if the fine or penalty or restitution was imposed for a petty disorderly persons offense nor one year in any case, whichever is the shorter period.

(c) In cases where a parolee has violated a condition of parole requiring payment of restitution and such condition was imposed pursuant to N.J.A.C. 10A:71-6.5, the Board panel may suspend the condition, modify the payment schedule or request the sentencing court to reduce the amount of restitution. If none of these alternatives is warranted, the Board panel, upon revoking parole, may impose a term of incarceration pursuant to (b) above.

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

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

Added (c).

Amended by R.1995 d.109, effective February 21, 1995.

See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).

Recodified from N.J.A.C. 10A:71-7.20 by R.1999 d.252, effective August 2, 1999.

See: 31 N.J.R. 1140(a), 31 N.J.R. 2218(a).

SUBCHAPTER 8. CERTIFICATE OF GOOD CONDUCT

10A:71-8.1 Definition

(a) The Certificate of Good Conduct is a document issued by the Board to assist the rehabilitation of convicted offenders by removing impediments and restrictions upon their ability to obtain proposed employment.

(b) The Certificate of Good Conduct does not imply pardon and under no circumstances is it to be construed as forgiving, absolving or mitigating the offense(s).

(c) Issuance of a Certificate of Good Conduct pursuant to N.J.S.A. 2A:168A-1, et seq. precludes a licensing authority, as defined in N.J.S.A. 2A:168A-2, from disqualifying or discriminating against the applicant because of any conviction for a crime unless N.J.S.A. 2C:51-2 is applicable.

Amended by R.1985 d.213, effective May 6, 1985.
See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).
Substituted "2C:51-2" for "2A:93-5".

10A:71-8.2 Eligibility

(a) An application for a Certificate of Good Conduct shall not be entertained unless the applicant meets all of the following requirements:

1. The applicant previously was paroled by the Board.
2. If the applicant is presently on parole, at least one year must have expired since release to parole supervision.
3. The applicant is not presently incarcerated.
4. At least two years have passed since the date any similar application was denied, unless the Board determines that significant information exists which provides a basis for a waiver of this limitation.

Amended by R.1994 d.273, effective June 6, 1994.
See: 26 N.J.R. 1193(a), 26 N.J.R. 2287(a).

10A:71-8.3 Procedure

(a) The applicant shall apply to the Board for a Certificate of Good Conduct on forms prescribed and furnished by the Board.

(b) Upon receipt of the application, the Board shall initiate a confidential investigation which shall contain all pertinent information, with particular reference to the need the applicant has for the use he or she expects to make of the certificate.

(c) The applicant shall be required to furnish all documentary evidence required by the Board, except as herein provided.

(d) The applicant shall have the right to restrict the Board's investigation. In such a case, the Board's investigator shall note in his or her report the limitations placed on the inquiry by the applicant, and the Board shall evaluate such limitations when considering the application.

10A:71-8.4 Criteria

The Board shall evaluate the application on the basis of the applicant having achieved a degree of rehabilitation indicating that his or her engaging in the proposed employment would not be incompatible with the welfare of society.

10A:71-8.5 Notification

(a) The Board shall notify the applicant of its decision within 30 days of the date the application was considered.

(b) A copy of the Certificate of Good Conduct, if granted, shall be filed with the Secretary of State.

10A:71-8.6 Revocation of Certificate of Good Conduct

The Board may revoke a Certificate of Good Conduct for good cause.

10A:71-8.7 Board action

The Board shall grant a revoke of Certificate of Good Conduct by majority vote of its members.

SUBCHAPTER 9. CERTIFICATE SUSPENDING CERTAIN EMPLOYMENT, OCCUPATIONAL DISABILITIES OR FORFEITURES

10A:71-9.1 Authorization to issue certificate

(a) A certificate may be issued by the Board in the case of a person who was under parole supervision in accordance with the provisions of N.J.S.A. 2A:168A-7, which suspends certain disabilities, forfeitures or bars to employment or professional licensure or certification that apply to persons convicted of criminal offenses.

(b) A certificate issued by the Board pursuant to N.J.S.A. 2A:168A-7 shall have the effect of relieving disabilities, forfeitures or bars, except those established or required by Federal law, to:

1. Public employment;
2. Qualification for a license or certification to engage in the practice of a profession, occupation or business, except the practice of law; or
3. Admission to an examination to qualify for such a license or certification, except for the bar examination, or an examination for a law enforcement, homeland security, or emergency management position.

(c) A certificate issued by the Board pursuant to N.J.S.A. 2A:168A-7 may be limited to one or more enumerated disabilities, forfeitures or bars, or may relieve the subject of all disabilities, forfeitures or bars that may be affected by N.J.S.A. 2A:168A-7.

10A:71-9.2 Definitions

The following words or terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Public employment” shall mean employment by a State, county, or municipal agency, but shall not include elected office, or employment in law enforcement, corrections, the judiciary, in a position related to homeland security or emergency management, or any position that has access to sensitive information that could threaten the public health, welfare, or safety.

“Qualified offender” refers to a person who has one criminal conviction or who has convictions for more than one crime charged in separate counts of one indictment or accusation. Multiple convictions charged in two indictments or two accusations, or one indictment and one accusation filed in the same court prior to entry of judgment under any of them, shall be deemed to be one conviction. Convictions of crimes entered more than 10 years prior to an application for a certificate under N.J.S.A. 2A:168A-7 shall not be considered in determining whether a person has one criminal conviction.

10A:71-9.3 Eligibility

(a) A certificate may be issued by the Board pursuant to N.J.S.A. 2A:168A-7 in regard to a qualified offender who is, or had previously been, under supervision by the Board if the Board determines pursuant to N.J.S.A. 2A:168A-8(b) that:

1. The applicant is convicted of a second, third or fourth degree offense and is eligible for relief as defined in (b) below;
2. The applicant has not been convicted of a crime since the conviction for which he or she is under supervision, has no pending criminal charge, and there is no information presented that such a charge is imminent;
3. Issuing the certificate will not pose a substantial risk to public safety; and
4. Issuing the certificate will assist in the successful reintegration of the offender and is consistent with the public interest.

(b) Pursuant to N.J.S.A. 2A:168A-8(c), a qualified offender is eligible for relief under (a) above if the offender has not been convicted of:

1. A first degree crime;
2. An offense to which N.J.S.A. 2C:43-7.2 applies;
3. A second degree offense defined in Chapters 13, 14, 15, 16, 24, 27, 30, 33 or 38 of Title 2C of the New Jersey Statutes;
4. A violation of N.J.S.A. 2C:24-4a. or N.J.S.A. 2C:24-4b.(4);
5. A crime requiring registration pursuant to N.J.S.A. 2C:7-2;
6. A crime committed against a public entity or against a public officer;

7. A crime enumerated in N.J.S.A. 43:1-3.1, committed by a public employee, which involves or touches upon the employee’s office, position or employment, such that the crime was related directly to the person’s performance in, or circumstances flowing from, the specific public office or employment held by the person;

8. Any crime committed against a person 16 years of age or younger, or a disabled or handicapped person; or

9. A conspiracy or attempt to commit any of the crimes described in this subsection.

(c) The Board may issue a certificate in regard to a qualified offender, when three years have passed since the applicant has completed the parole supervision portion of his or her sentence and the Board determines pursuant to N.J.S.A. 2A:168A-8(d) that:

1. The applicant is eligible for relief as defined in (d) below;
2. Issuing the certificate does not pose a substantial risk to public safety; and
3. Issuing the certificate will assist in the successful reintegration of the offender and is consistent with the public interest.

(d) Pursuant to N.J.S.A. 2A:168A-8(e), a qualified offender is eligible for relief under (c) above if he or she has remained without criminal involvement since his or her conviction, including that he or she has not subsequently been convicted of a crime, has no pending charges for any crime, and there is no information presented that such a charge is imminent; and is applying for relief from a conviction other than:

1. A first degree crime;
2. Any of the offenses to which N.J.S.A. 2C:43-7.2 applies;
3. A violation of N.J.S.A. 2C:24-4a. or N.J.S.A. 2C:24-4b.(4);
4. A crime requiring registration pursuant to N.J.S.A. 2C:7-2;
5. A crime enumerated in N.J.S.A. 2C:43:1-3.1, committed by a public employee, which involves or touches upon the employee’s office, position or employment, such that the crime was related directly to the person’s performance in, or circumstances flowing from, the specific public office or employment held by the person;
6. A crime committed against a person 16 years of age or younger, or a disabled or handicapped person; or
7. A conspiracy or attempt to commit any offense described in this subsection.

(e) The certificate issued pursuant to (a) or (c) above may suspend disabilities, forfeitures and bars generally within the

limits of N.J.S.A. 2A:168A-7 et seq., or only certain disabilities, forfeitures and bars specifically named in the certificate document issued by the Board.

10A:71-9.4 Presumption of rehabilitation

Pursuant to N.J.S.A. 2A:168A-9, a certificate issued pursuant to N.J.S.A. 2A:168A-7 shall be presumptive evidence of the subject's rehabilitation when considered in regard to public employment as defined in N.J.S.A. 2A:168A-7 and N.J.A.C. 10A:71-9.2, or in conjunction with any licensing, or certification process to which this act applies, which in any particular case may or may not be overcome by other evidence or information. A certificate granted under N.J.S.A. 2A:168A-7 shall not prevent any judicial, administrative, licensing or other body, board, authority or public official from relying on grounds other than the fact of the criminal conviction in exercising any discretionary authority, if any, to suspend, revoke, refuse to issue or refuse to renew any license, permit or other authority or privilege or to determine eligibility or suitability for employment.

10A:71-9.5 Procedure

(a) The applicant shall apply to the Board for a certificate on forms prescribed and furnished by the Board.

(b) Upon receipt of the application, the Board may initiate a confidential investigation, which shall contain all pertinent information, with particular reference to the need the applicant has for the use he or she expects to make of the certificate.

(c) The applicant shall be required to furnish all documentary evidence required by the Board.

10A:71-9.6 Notification

(a) The Board shall provide written notice to the appropriate prosecutor of the pendency of an application submitted pursuant to this subchapter within 30 days of receipt of the application.

(b) The Board shall provide written notice to the appropriate prosecutor of the decision rendered by the Board on an application submitted pursuant to this subchapter within 30 days of the date of the decision.

(c) The Board shall provide written notice to the applicant of its decision within 30 days of the date of the decision.

(d) The original copy of the certificate, if granted, shall be filed with the Secretary of State.

(e) A copy of the certificate, if granted, shall be provided to the applicant.

(f) The certificate document provided to the applicant shall include a statement that the document is a copy and that

a certifying authority, licensing authority or public employer should confirm with the Secretary of State that the certificate remains valid.

(g) If the Board should revoke a certificate pursuant to N.J.A.C. 10A:71-9.7, the Board shall provide written notice to the person who is the subject of the certificate, the appropriate prosecutor, the Secretary of State, the appropriate certifying authority, licensing authority or public employer within 15 days of the date of decision.

10A:71-9.7 Revocation of certificate

(a) In accordance with N.J.S.A. 2A:168A-11, a certificate granted pursuant to N.J.S.A. 2A:168A-7 shall no longer be valid if the person who is the subject of the certificate is indicted for a first or second degree crime or convicted of a crime.

(b) Upon presentation of satisfactory proof that the criminal charges or indictment have been dismissed, or of an acquittal after trial, a certificate revoked under the circumstances described in (a) above may be reinstated by the Board.

(c) A certificate may be revoked at any time upon application of the prosecutor or on the Board's own initiative when information is received that circumstances have materially changed, such that the relief would not be authorized under N.J.S.A. 2A:168A-7 et seq., or is no longer in the public interest.

(d) A person who is the subject of a certificate shall be provided written notice prior to the Board rendering a decision to revoke the certificate. The person who is the subject of the certificate may provide a written statement for consideration by the Board as to why the certificate should not be revoked. The written statement must be received by the Board within 21 days of the person who is the subject of a certificate receiving the Board's notice. If a written statement is not received within the specified time period, the Board may proceed to consider the matter.

(e) The notice provided pursuant to (d) above shall not be required if the basis for revocation of the certificate is an indictment for a first or second degree crime or the conviction for the commission of a crime.

(f) Upon notice of the decision by the Board to revoke a certificate, the person who is the subject of the certificate shall surrender the certificate to the Board.

10A:71-9.8 Board action

A decision by the Board to grant or revoke a certificate shall be rendered pursuant to N.J.A.C. 10A:71-1.2(h) and (i).