

CHAPTER 71

PAROLE

Authority

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30:4-123.54(d), 30:4-123.59(c),
30:4-123.63 and 30:4-123.64.

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R.1995 d.109, effective January 27, 1995.
See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).

Executive Order No. 66(1978) Expiration Date

Chapter 71, Parole, expires on January 27, 2000.

Chapter Historical Note

Chapter 71 was filed and became effective August 7, 1980 as R.1980 d.359. See: 12 N.J.R. 420(b), 12 N.J.R. 538(a). Amendments were filed and became effective September 10, 1981 as R.1981 d.322. See: 13 N.J.R. 436(a), 13 N.J.R. 597(a).

Pursuant to Executive Order No. 66(1978), Chapter 71 was readopted as R.1985 d.213, effective April 15, 1985. See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a). Pursuant to Executive Order No. 66(1978), Chapter 71 was readopted as R.1990 d.141, effective February 5, 1990. See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

Pursuant to Executive Order No. 66(1978), Chapter 71 was readopted as R.1995 d.109. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. BOARD ORGANIZATION

10A:71-1.1 Definitions

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

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

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

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

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

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

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

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

“County inmate” shall mean an inmate who is:

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

2. Sentenced to serve a term of incarceration not to exceed 18 months or terms which in aggregate, do not exceed 18 months in a county penitentiary or a workhouse.

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

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

“District parole supervisor” shall mean any district parole supervisor in the Bureau of Parole of the New Jersey Department of Corrections.

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

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

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

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

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

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

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

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

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

Administrative correction, effective January 27, 1989.

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

Institutional name change.

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

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

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

10A:71-1.2 Board meetings

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

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

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

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

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

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

(c) The Board shall hold a public meeting at least annually for the purpose of soliciting input from members of the

public and the criminal justice system on the operations, policies, and procedures of the Board.

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

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

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

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

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

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

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

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

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

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

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

(j) Substantially amended.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section substantially amended.

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

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

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

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

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

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

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

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

10A:71-1.4 Board vacancies

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.

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, the senior Board member shall function as the presiding member of the Board or Board panel.

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.

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.

“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, 7.16, 7.16A and 7.16B. 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.

“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.

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”.

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(i), 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:71-7.16, 7.16A or 7.16B.

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.

i. When an inmate committed to the Adult Diagnostic and Treatment Center is transferred out of the Adult Diagnostic and Treatment Center by order of the Commissioner pursuant to N.J.S.A. 2C:47-4(b), the inmate shall be eligible for parole consideration pursuant to (c)1, 2, 3 or 5 above as appropriate.

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 book 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 returned to confinement from the Intensive Supervision Program for any reason and if the inmate's parole eligibility date has passed at the time the inmate is returned to confinement, the following provisions shall apply in the case of an inmate denied parole release on or after May 21, 1990:

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 of the inmate's return to confinement.

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 of the inmate's return to confinement 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 has not been transferred out of the Adult Diagnostic and Treatment Center pursuant to N.J.S.A. 2C:47-4(b), 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 pursuant to N.J.S.A. 2C:47-1, et seq.

(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, 7.16, 7.16A or 7.16B.

(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.

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.

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:71-7.16, 7.16A or 7.16B 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.

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

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

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

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

Section substantially amended.

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

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

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

Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) It shall be the responsibility of the chief executive officer to file a report concerning the inmate with the appropriate Board panel and the Bureau of Parole within 60 days of the receipt of the Board's list. If the report is not filed within the 60 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 with the appropriate Board panel. In the case of an inmate identified by the Board's staff as being past eligible for parole consideration, the chief executive officer shall give priority to the preparation and filing of the report on the inmate with the appropriate Board panel.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section substantially amended.

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

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

Case Notes

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

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

10A:71-3.8 Public notice; adult inmates

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

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

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

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

(b) added.

Case Notes

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

10A:71-3.9 Inmate statements; adult inmates

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

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

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

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

Cross reference changed.

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

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

Case Notes

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

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

(a) 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) When inmates are sentenced to the Adult Diagnostic and Treatment Center pursuant to N.J.S.A. 2A:164-3 et seq., or when inmates are sentenced to and housed at the Adult Diagnostic and Treatment Center pursuant to N.J.S.A. 2C:47-5, the Board panel shall determine whether the inmate, if released, is capable of making an acceptable social adjustment in the community.

(c) 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) and (b) above.

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

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

(c) substantially amended. (d) added.

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

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

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

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

1. Commission of a crime while incarcerated.
2. Commission of serious disciplinary infractions.
3. Nature and pattern of previous convictions.
4. Adjustment to previous probation, parole and incarceration.
5. Facts and circumstances of the offense.
6. Aggravating and mitigating factors surrounding the offense.
7. Pattern of less serious disciplinary infractions.
8. Participation in institutional programs which could have led to the improvement of problems diagnosed at admission or during incarceration. This includes, but is not limited to, participation in substance abuse programs, academic or vocational education programs, work assignments that provide on-the-job training and individual or group counseling.
9. Statements by institutional staff, with supporting documentation, that the inmate is likely to commit a crime if released.
10. Documented pattern or relationships with institutional staff or inmates.
11. Documented changes in attitude toward self or others.
12. Documentation reflecting personal goals, personal strengths or motivation for law-abiding behavior.
13. Mental and emotional health.
14. Parole plans and the investigation thereof.
15. Status of family or marital relationships at the time of eligibility.
16. Availability of community resources or support services for inmates who have a demonstrated need for same.
17. Statements by the inmate reflecting on the likelihood that he or she will commit another crime.
18. History of employment, education and military service.
19. Family and marital history.

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

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

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

(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.

Case Notes

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

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

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

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

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

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

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

(j) 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.

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

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).

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:71-3.50, 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 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).

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 a member 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, 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).

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

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

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

1. Establishing a parole release date based upon the inmate's projected parole eligibility date; or
2. Establishing a specific parole release date; and
3. Establishing appropriate pre-release conditions; and
4. Establishing appropriate special parole conditions pursuant to N.J.A.C. 10A:71-6; and
5. Issuing a written decision within 21 days of the Board members' action to the inmate, the Department, the Board and the Prosecutor for the county from which the inmate was committed.

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

1. Notify the senior Board representative at the institution immediately upon an acceleration in the credit pattern. If an acceleration in the credit pattern has occurred then:
 - i. The parole eligibility date shall be recalculated;
 - ii. A new parole release date shall be established; and
 - iii. The inmate shall be notified of the new parole release date.
2. Certify to the senior Board representative at the institution, within 72 hours prior to the date of release, that the inmate has maintained the credit pattern as

established by the classification department. If the inmate has failed to earn the projected credits then:

- i. The inmate's release on parole shall be deferred;
- ii. The parole eligibility date shall be recalculated;
- iii. A new parole release date shall be established unless good cause exists to suspend or rescind the parole release date pursuant to N.J.A.C. 10A:71-5; and
- iv. The inmate shall be notified that release on parole has been deferred and that a new parole release date has been established.

(d) If such Board members do not concur with the recommendation of the hearing officer, the members shall refer the case to the appropriate Board panel for a hearing and issue a written decision to the inmate, the Department and the Board within seven days consisting of the reasons for the Board members' referral.

(e) If such Board members do not reach a unanimous decision, the Chairperson shall determine whether the case shall be referred to the appropriate Board panel for a hearing or whether the case shall be referred to a third Board panel member for review.

1. If the determination is rendered by the Chairperson that the case shall be referred to the appropriate Board panel for a hearing, a written decision shall be issued to the inmate, the Department and the Board within seven days consisting of the reasons for the referral.

2. If the Chairperson refers the case to a third Board panel member and upon review it is the majority vote of the Board panel members to concur with the recommendation of the hearing officer, parole release shall be certified 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).

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).

New (c) added; (c)-(d) recodified as (d)-(e).
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).

10A:71-3.17 Board panel hearing; scheduling for adult inmates

(a) 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.

(b) Except as provided in N.J.A.C. 10A:71-3.50, 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 schedule of such hearings 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 or designee to notify the Board panel, 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).

(b) substantially amended; (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).

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

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

Parole hearing was untimely. *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:71-3.18 Board panel hearing; notice of decision for adult inmates

(a) At the conclusion of the Board panel hearing, the Board panel shall take one of the following actions:

1. Certify parole release, except as provided in (b) below, as soon as practicable after the parole eligibility date by:

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

ii. Establishing a specific parole release date; and

iii. Establishing appropriate pre-release conditions; and

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

2. Deny parole and establish a future parole eligibility date pursuant to N.J.A.C. 10:71-3.21.

3. Defer decision pending the receipt of relevant information.

i. No such deferral shall extend more than 180 days unless otherwise authorized by the Board.

ii. If such additional relevant information is of an adverse nature, then the parole hearing shall be reconvened as soon as possible after receipt of such information.

(b) If the Board panel determines that the inmate shall be placed in a halfway house facility for a specified time period as a pre-release condition, the Board panel shall refer the matter to the Board for review. If the Board upon reviewing the record concurs that placement of the inmate in a half-way house facility for a specified time period is an appropriate 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 panel shall determine whether the pre-release condition should be eliminated and the grant of parole affirmed or whether the inmate should be denied parole.

(c) Pursuant to N.J.S.A. 30:4-123.55(f), the Board panel shall not certify parole release in the case of an offender serving a term for the crime of murder. In such a case, if the Board panel is of the opinion that parole release is appropriate, the Board panel shall automatically refer the case for a hearing before the Board. The provisions of this subsection shall not apply to an inmate who has his or her parole revoked and is returned to custody pursuant to N.J.S.A. 30:4-123.63.

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

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

- i. The parole eligibility date shall be recalculated;
- ii. A new parole release date shall be established; and
- iii. The inmate shall be notified of the new parole release date.

2. Certify to the senior Board representative at the institution, within 72 hours prior to the date of release, that the inmate has maintained the credit pattern as established by the classification department. If the inmate has failed to earn the project credits then:

- i. The inmate's release on parole shall be deferred;
- ii. The parole eligibility date shall be recalculated;
- iii. A new parole release date shall be established unless good cause exists or suspend or rescind the parole release date pursuant to N.J.A.C. 10A:71-5; and

iv. The inmate shall be notified that release on parole has been deferred and that a new parole release date has been established.

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

(f) Such notice shall consist of the decision of the Board panel, and, if the Board panel's decision is to deny parole 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.

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).

Deleted (a)4.

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

New (b) added; (b)-(d) recodified to (c)-(e).

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

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

In (a)3i, increased the deferral limit from 90 days to 180 days.

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 in consideration of the circumstances of the crime, the characteristics and prior criminal record of the inmate and the inmate's institutional behavior.

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:71-3.35 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.

10A:71-3.38 Purpose of parole hearing; county inmates

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.

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.

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 by N.J.A.C. 10A:71-3.50, 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.

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.

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 a member 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 Bureau 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.

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 senior hearing officer.

(b) If such Board member(s) or one Board member of the appropriate panel and one senior hearing officer concurs with the recommendation of the hearing officer, the Board member(s) or one Board member and one senior 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
4. Issuing a written notice of this action within seven days to the inmate, the chief executive officer of the institution, the Bureau of Parole and the Board.

(c) If such Board member(s) or one Board member of the appropriate panel and one senior hearing officer do not concur with the recommendation of the hearing officer, the Board member(s) or one Board member and one senior hearing officer shall refer the case to the appropriate Board panel for a hearing and issue a written decision to the inmate, the chief executive officer and the Board within seven days of the decision consisting of the reasons for the referral.

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:71-3.41, effective March 5, 1990.
See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).
Recodified from 10A:71-3.43 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:71-3.45.

10A:71-3.45 Board panel hearings: scheduling for county inmates

(a) Any case referred to a Board panel by a hearing officer pursuant to N.J.A.C. 10A:71-3.42 or by a Board member(s) or a Board member and a senior hearing officer pursuant to N.J.A.C. 10A:71-3.43 shall be scheduled by the Chairperson for a hearing by the appropriate Board panel.

(b) The Board panel may be composed of any two Board members or any one Board member and one senior hearing officer as necessary for the efficient functioning of the Board.

(c) Except as provided in N.J.A.C. 10A:71-3.50, such hearing shall be conducted at least 14 days in advance of the

inmate's parole eligibility date or as soon as administratively feasible.

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

(e) 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 scheduled for a hearing is not expected to be available for any reason.

(f) 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.

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

(h) At the request of the Chairperson, it shall be the responsibility of the chief executive officer of the institution or designee to transport any inmate to another county correctional facility designated by the Chairperson for a scheduled parole hearing. A request to a chief executive officer or designee to transport an inmate shall only be made to insure the efficient functioning of the Board panel and in no case shall a chief executive officer or designee be requested to transport more than two inmates to another county correctional facility.

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:71-3.42 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. cites changed.
Recodified from 10A:71-3.44 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:71-3.46.

10A:71-3.46 Board panel hearing: notice of decision for county inmates

(a) At the conclusion of the Board panel hearing, the Board panel shall take one of the following actions:

1. Certify parole release as soon as practicable after the parole eligibility date by:
 - i. Establishing a specific parole release date as soon after the inmate's actual parole eligibility date as practicable; and
 - ii. Establishing appropriate pre-release conditions; and
 - iii. Establishing appropriate special parole conditions pursuant to N.J.A.C. 10A:71-6.
2. Deny parole;
3. Defer decision pending receipt of relevant information:

i. No such deferral shall extend more than 30 days unless otherwise authorized by the Board.

ii. If such additional relevant information is of an adverse nature, then the parole hearing shall be reconvened as soon as possible after receipt of such information.

(b) At the Board panel hearing or within 21 days of the Board panel hearing, the Board panel shall issue a written notice to the inmate, the chief executive officer of the institution, the Bureau of Parole and the Board.

(c) Such notice shall consist of the decision of the Board panel, and, if the Board panel's decision is to deny parole 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 by the chief executive officer of the institution.

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.1988 d.336, effective July 18, 1988.
See: 19 N.J.R. 1396(b), 20 N.J.R. 1716(b).
Deleted (a)4.
Recodified from N.J.A.C. 10A:71-3.43, effective March 5, 1990.
See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).
Recodified from 10A:71-3.45 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:71-3.47.

10A:71-3.47 Board panel action: denial of parole

Upon determining to deny parole to a county inmate, the Board panel shall either establish a future parole eligibility date upon which the inmate shall be primarily eligible for parole or direct the inmate to serve the balance of the sentence.

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:71-3.44, effective March 5, 1990.
See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).
Recodified from 10A:71-3.46 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:71-3.48.

10A:71-3.48 Victim input

(a) Any victim injured as a result of a crime of the first or second degree or the nearest relative of a murder/manslaughter victim shall be entitled to present a statement for the parole report, filed pursuant to N.J.A.C. 10A:71-3.7, to be considered during the parole hearing process, to present testimony to a senior hearing officer designated by the Board panel, to present testimony to the Board panel, or to present testimony to the Board, if a hearing is conducted pursuant to N.J.A.C. 10A:71-3.19, concerning the victim's harm. Upon the request of a victim or a nearest relative of a murder/manslaughter victim or at the discretion of a Board panel or the Board, a copy of the parole report, except information, documents, reports, records or other written materials deemed confidential pursuant to N.J.A.C. 10A:71-2.1, prepared pursuant to N.J.A.C. 10A:71-3.7 shall be provided to the victim or the nearest relative of a murder/manslaughter victim.

(b) The term "victim" shall mean a person who suffers a personal, physical or psychological injury or death or incurs loss of or injury to personal or real property as a result of a crime of the first or second degree committed against that person, or in the case of murder/manslaughter, the nearest relative of the victim. In the case of a minor, victim shall also mean the minor's parent(s) or guardian.

(c) The term "nearest relative of a murder/manslaughter victim" shall mean a spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half-brother, half-sister and guardian of a minor.

(d) At the time of sentencing, the prosecutor shall notify any victim injured as a result of a crime of the first or second degree or the nearest relative of a murder/manslaughter victim of the opportunity to present a statement for the parole report to be considered during the parole hearing process, to present testimony to a senior hearing officer designated by the Board panel, to present testimony to the Board panel, or to present testimony to the Board, if a hearing is conducted pursuant to N.J.A.C. 10A:71-3.19, concerning the victim's harm.

(e) Each victim or nearest relative of a murder/manslaughter victim shall be responsible for notifying the Board of his or her intent to submit a statement, or to testify, and to provide and keep current an appropriate mailing address.

(f) The statement or testimony of the victim or nearest relative of a murder/manslaughter victim may include the following:

1. The continuing nature and extent of any physical, psychological or emotional harm or trauma suffered;
2. The extent of any loss of earnings or ability to work suffered by the victim; and
3. The continuing effect of the crime upon the victim's family.

(g) At the time public notice is given pursuant to N.J.A.C. 10A:71-3.8, the Board shall notify any victim or nearest relative of a murder/manslaughter victim who has previously contacted the Board of the opportunity to provide a statement for inclusion in the parole report or to present testimony to a senior hearing officer designated by the Board panel, to the Board panel or to the Board, if a hearing is conducted pursuant to N.J.A.C. 10A:71-3.19. The Board shall notify such person at the address of record.

(h) The victim or nearest relative of a murder/manslaughter victim shall notify the Board within 30 days from the date of the notice provided pursuant to (g) above of his or her intent to submit a statement or to testify before a senior hearing officer designated by the Board panel, before the Board panel or before the Board, if a hearing is conducted pursuant to N.J.A.C. 10A:71-3.19. This time period may be waived by the Board for good cause.

(i) Upon the victim or nearest relative of a murder/manslaughter victim submitting a written statement to the Board subsequent to notice being provided pursuant to (g) above, the statement shall be made a part of the Board's file on the inmate and the inmate's case shall be referred to a hearing officer designated to conduct parole release hearings pursuant to N.J.A.C. 10A:71-3.14.

(j) Upon the victim or nearest relative of a murder/manslaughter victim informing the Board subsequent to notice being provided pursuant to (g) above that such person intends to testify before a senior hearing officer designated by the Board panel, the Chairperson shall assign the inmate's case to a senior hearing officer for the purpose of receiving such person's testimony. The case shall be processed as follows:

1. Except as provided in N.J.A.C. 10A:71-3.50, the assigned senior hearing officer shall conduct a hearing within 30 days from the date the Board received notification of the intent to offer testimony.

2. The hearing shall be conducted at a time and place and on a date determined by the Chairperson or designee. Notice of the time, place and date of the hearing shall be provided to the victim or nearest relative of a murder/manslaughter victim in writing and shall be mailed at least 14 days prior to the hearing date.

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

4. The senior hearing officer shall prepare a written report within 14 days of the hearing date. A copy of the report shall be forwarded to the person offering testimony. A copy of the report shall be made a part of the Board's file on the inmate.

5. Upon the completion of the written report, the inmate's case shall be referred to a hearing officer designated to conduct parole release hearings pursuant to N.J.A.C. 10A:71-3.14.

6. The hearing scheduled pursuant to this subsection shall be conducted, when possible, prior to a parole release hearing and prior to the appropriate Board member(s), Board panel or the Board rendering a decision pursuant to N.J.A.C. 10A:71-3.16 and 3.18. However, nothing herein shall be construed to preclude the Board from conducting a timely parole release hearing.

7. During the hearing conducted pursuant to this subsection, only the senior hearing officer, appropriate Board personnel and the victim or nearest relative of a murder/manslaughter victim shall be present in the hearing room. If deemed necessary by the senior hearing officer, a translator may be permitted to assist in the hearing or a family member may be permitted to assist a minor, elderly or infirm victim or nearest relative of a murder/manslaughter victim in the hearing. The senior hearing officer may also permit an individual to be present in the hearing room for the limited purpose of providing emo-

tional support to the victim or nearest relative of a murder/manslaughter victim.

(k) Upon the victim or nearest relative of a murder/manslaughter victim informing the Board subsequent to notice being provided pursuant to (g) above that such person intends to testify before the Board panel, the case shall be processed as follows:

1. Victim input shall be received by the Board panel on the date of the inmate's scheduled hearing before the Board panel and at the designated institution. However, if deemed appropriate by the Board panel, the victim input may be received by the Board panel at a place and on a date other than at the institution in which the inmate is confined and on the date of the inmate's scheduled hearing before the Board panel. If the two Board panel members cannot reach agreement on an alternate place and date, the matter shall be referred to the Chairperson for a final decision.

2. The victim input segment of the Board panel hearing shall be conducted, with the consent of the Department or Commission, in the administrative area of the institution.

3. Notice of the time, place and date of the Board panel hearing shall be provided to the victim or nearest relative of a murder/manslaughter victim in writing and shall be mailed at least 14 days prior to the hearing date.

4. The victim or nearest relative of a murder/manslaughter victim shall be required to confirm with the Board their appearance before the Board panel seven days prior to the hearing date.

5. Upon confirmation by the victim or nearest relative of a murder/manslaughter victim of their appearance before the Board panel, the Board shall notify the Department or Commission of the identities of the person(s) who will appear before the Board panel on the scheduled hearing date.

6. The Board shall notify the victim or nearest relative of a murder/manslaughter victim that appropriate personal identification is required by the Department or Commission in order to enter the institution.

7. During the victim input segment of the Board panel hearing, the Board panel shall permit the victim or nearest relative of a murder/manslaughter victim a reasonable opportunity to present information relative to the factors outlined in (f) above or any other information relevant to the Board panel's consideration of the inmate's case. The Board panel shall, in recognition of the number of hearings to be conducted on the hearing date, be permitted to establish a reasonable time period(s) for the presentation of information.

8. The victim input segment of the Board panel hearing shall be recorded by an electronic recording device

and said recording shall be maintained as part of the Board's file on the inmate's case.

9. If a Board panel hearing is cancelled, the Board panel shall provide immediate notification of the cancellation to the victim or nearest relative of a murder/manslaughter victim. The Board panel shall provide reasonable notice of the time, place and date of the Board panel hearing upon the hearing being rescheduled.

10. In the victim input segment of the Board panel hearing, only the Board members, appropriate Board personnel and victim or nearest relative of a murder/manslaughter victim shall be present in the hearing room. If deemed necessary by the Board panel, a translator may be permitted to assist in the hearing or a family member may be permitted to assist a minor, elderly or infirm victim or nearest relative of a murder/manslaughter victim in the hearing. The Board panel may also permit an individual to be present in the hearing room for the limited purpose of providing emotional support to the victim or nearest relative of a murder/manslaughter victim.

11. If a victim or nearest relative of a murder/manslaughter victim provides notice of their inability to attend the Board panel hearing on the scheduled date, the hearing shall be conducted as scheduled. However, if the hearing on the scheduled date is cancelled, the Board panel shall provide reasonable notice of the time, place and date of the Board panel hearing upon the hearing being rescheduled.

12. Upon the conclusion of the victim input segment of the Board panel hearing, the Board panel shall reconvene the hearing with the inmate present in the hearing room designated by the Department or Commission. In the inmate segment of the Board panel hearing, the victim or nearest relative of a murder/manslaughter victim shall not be present in the hearing room.

(f) If a hearing is conducted pursuant to N.J.A.C. 10A:71-3.19, the Board shall notify the nearest relative of a murder victim, who has previously contacted the Board, of the hearing and shall afford the nearest relative of a murder victim the opportunity to testify in person before the Board or to submit a written statement. If the nearest relative of a murder victim intends to testify before the Board, the case shall be processed as follows:

1. Victim input shall be received by the Board on the date of the inmate's scheduled hearing before the Board and at the designated institution.

2. The victim input segment of the Board hearing shall be conducted, with the consent of the Department or Commission, in the administrative area of the institution.

3. Notice of the time, place and date of the Board hearing shall be provided to the nearest relative of a murder victim in writing and shall be mailed at least 14 days prior to the hearing date.

4. The nearest relative of a murder victim shall be required to confirm with the Board their appearance before the Board seven days prior to the hearing date.

5. Upon confirmation by the nearest relative of a murder victim of their appearance before the Board, the Board shall notify the Department or Commission of the identities of the person(s) who will appear before the Board on the scheduled hearing date.

6. The Board shall notify the nearest relative of a murder victim that appropriate personal identification is required by the Department or Commission in order to enter the institution.

7. During the victim input segment of the Board hearing, the Board shall permit the nearest relative of a murder victim a reasonable opportunity to present information relative to the factors outlined in (f) above or any other information relevant to the Board's consideration of the inmate's case. The Board shall, in recognition of the number of hearings to be conducted on the hearing date, establish a reasonable time period(s) for the presentation of information.

8. The victim input segment of the Board hearing shall be recorded by an electronic recording device and said recording shall be maintained as part of the Board's file on the inmate's case.

9. If a Board hearing is cancelled, the Board shall provide immediate notification of the cancellation to the nearest relative of a murder victim. The Board shall provide reasonable notice of the time, place and date of the Board hearing upon the hearing being rescheduled.

10. In the victim input segment of the Board hearing, only the Board members, appropriate Board personnel and the nearest relative of a murder victim shall be present in the hearing room. If deemed necessary by the Board, a translator may be permitted to assist in the hearing or a family member may be permitted to assist a minor, elderly or infirm nearest relative of a murder victim in the hearing. The Board may also permit an individual to be present in the hearing room for the limited purpose of providing emotional support to the nearest relative of a murder victim.

11. If a nearest relative of a murder victim provides notice of their inability to attend the Board hearing on the scheduled date, the hearing shall be conducted as scheduled. However, if the hearing on the scheduled date is cancelled, the Board shall provide reasonable notice of the time, place and date of the Board hearing upon the hearing being rescheduled.

12. Upon the conclusion of the victim input segment of the Board hearing, the Board shall reconvene the hearing with the inmate present in the hearing room designated by the Department or Commission. In the inmate segment of the Board hearing, the nearest relative of a murder victim shall not be present in the hearing room.

(m) If notice pursuant to (h) above is received subsequent to the conducting of an initial parole hearing but prior to a decision being rendered in the inmate's case, the appropriate Board member(s), Board panel or the Board shall not render a decision in the inmate's case until a written statement is received and made a part of the Board's file on the inmate, a hearing has been conducted pursuant to (j) above and the written report prepared and made a part of the Board's file or a hearing has been conducted pursuant to (k) above. If it is the intent of the victim or the relative of a murder/manslaughter victim to submit a written statement, as evidenced by the notification to the Board pursuant to (h) above, the written statement must be submitted and received by the Board within 30 days of the date of the Board having received the initial notification of intent or the appropriate Board member(s), Board panel or the Board may proceed to render a decision in the inmate's case.

(n) If notice pursuant to (h) above is received subsequent to the rendering of a decision certifying parole release, the appropriate Board member(s), Board panel or the Board shall suspend the parole release date pursuant to N.J.A.C. 10A:71-5.1 pending the receipt of a written statement or the completion of a hearing pursuant to (j) and the submission of a report or a hearing has been conducted pursuant to (k) above. If it is the intent of the victim or the relative of a murder/manslaughter victim to submit a written statement, as evidenced by the notification to the Board pursuant to (h) above, the written statement must be submitted and received by the Board within 30 days of the date of the Board having received the initial notification of intent or the appropriate Board member(s), Board panel or the Board may rescind the suspension of the parole release date.

1. Within 14 days of submission of a written statement, the report of the designated senior hearing officer or the completion of the hearing pursuant to (k) above, the Board member(s), Board panel or 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 inmate and the Department or Commission in writing of its decision.

(o) Any and all statements or testimony of the victim or nearest relative of a murder/manslaughter victim submitted to the Board pertaining to the continuing nature and extent of any physical harm or psychological or emotional harm or trauma suffered by the victim, the extent of any loss of earnings or ability to work suffered by the victim and the continuing effect of the crime upon the victim's family shall be deemed confidential and shall not be released to the inmate.

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

(q) Nothing in this section shall preclude the Board from receiving statements or testimony from any victim injured as a result of a crime of the third or fourth degree or the nearest relative of a victim. However, statements shall be submitted in writing to the Board and testimony shall be received by a designated senior hearing officer pursuant to (j) above.

(r) A victim or the nearest relative of a victim who has submitted a written statement for the parole report or testified at a hearing pursuant to this section shall be notified by the appropriate Board panel or the Board of the final decision rendered in the inmate's case.

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:71-3.45; changed internal N.J.A.C. cites.

Amended by R.1993 d.410, effective August 16, 1993.

See: 25 N.J.R. 4483(a), 25 N.J.R. 3826(b).

Amended by R.1994 d.180, effective April 4, 1994.

See: 25 N.J.R. 4705(a), 26 N.J.R. 1507(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:71-3.47 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 (k)2, 5, 6, and 12, (l)2, 5, 6, and 12, and (n)1iv, inserted reference to Commission. Former section recodified to N.J.A.C. 10A:71-3.49.

10A:71-3.49 Informational hearing

(a) Upon public notice of an inmate's parole eligibility being issued pursuant to N.J.A.C. 10A:71-3.8, the Attorney General, the appropriate county prosecutor, any other criminal justice agency and any interested party whose information and comment may be relevant as to the necessity or desirability of an inmate's parole shall be permitted, upon their application to the Chairperson or designee, to submit to the appropriate panel or the Board evidence, to give testimony, examine and cross-examine witnesses and present such other information on all matters directly relevant to the parole of an inmate.

(b) The application shall be submitted to the Chairperson or designee in writing and shall include a description of the nature and type of evidence or testimony to be presented. A list of potential witnesses and a statement as to the relevancy of their testimony to the issue of parole must be submitted to the Chairperson or designee as part of the application or prior to the date of the hearing scheduled pursuant to this section.

(c) Upon receipt of the application, the Chairperson or designee shall assign the case to a hearing officer for the conducting of a hearing.

(d) A designated representative shall notify the inmate in writing that a hearing will be scheduled for the purpose of receiving information relevant to his parole release. The inmate shall be informed of the identity of the agency or interested party requesting the hearing.

(e) Except as provided in N.J.A.C. 10A:71-3.50, the assigned hearing officer shall conduct the hearing within 30 days from the date the Chairperson or designee received the application submitted pursuant to (a) above.

(f) The hearing shall be conducted at a time and place and on a date determined by the Chairperson or designee. Primary consideration shall be given to the conducting of the hearing within the county most convenient for the majority of the parties concerned.

(g) A designated representative shall provide notification of the time, date and location of the hearing to all interested parties and the inmate. The notice shall be in writing and shall be mailed no later than 15 days prior to the date of the hearing.

(h) The hearing shall be informal and non-adversarial in nature. The hearing officer shall have the authority to exclude from participation in the hearing any person who attempts to use the hearing as a forum for public commentary or as a public contest or whose participation becomes more adversarial than informative in nature.

(i) Prior to any person offering testimony the hearing officer shall advise the person of the following:

1. That his testimony will be summarized in a written report;
2. That the person will receive a copy of that portion of the report summarizing his statement; and
3. That the inmate will receive a copy of the summarized statement unless the hearing officer determines that the release of the information would endanger the safety of the person.
4. The Board on its own motion may for good cause identify all or part of the testimony summarized in the written report as confidential.

(j) The admissibility of any statement, document or information shall not be governed by the statutory or judicial rules of evidence of this State. Any statement, document, or information relevant to the issue of the inmate's suitability for parole may be received as evidence. The hearing officer is authorized to exclude any statement, document or information not relevant to the issue of the inmate's suitability for parole.

(k) Upon the completion of the hearing, which shall be recorded by an electronic recording device, the hearing officer shall prepare a written report within 14 days of the hearing date. The report shall summarize the information, testimony and documentation admitted at the hearing. A copy of the complete summary report shall be forwarded to the agency or interested party originally requesting the conducting of a hearing and to the inmate and/or counsel. A copy of the summary of each of the witnesses' testimony shall be forwarded to each witness. A complete summary report shall be made a part of the appropriate Board panel's or Board's file on the inmate.

(l) The inmate and/or counsel shall have 30 days to prepare a written response to the hearing officer's summary report and to submit the response to the Board. In addition, upon request, the inmate shall be provided an opportunity to present relevant information to the hearing officer. The request shall be in compliance with (b) above.

(m) Upon receipt of the inmate's request to present relevant information, the hearing officer shall proceed in accordance with (f), (g), (h), (i), (j) and (k) above.

(n) The inmate and the agency or interested party originally requesting the conducting of a hearing shall have 14 days to prepare comments to the hearing officer's summary report and submit the comments to the Board.

(o) The inmate may be represented by an attorney or such other qualified representative as the inmate may designate at both the initial hearing segment, at which the inmate may not be present, and at any subsequent hearing segment at which the inmate submits information and/or testimony. If a subsequent hearing segment is conducted at the request of the inmate, the Attorney General, the prosecutor, a criminal justice agency or an interested party may appear, subject to the security regulations of the institution, and participate in the hearing.

(p) Upon completion of the hearing process, the inmate's case shall be referred to a hearing officer designated to conduct parole release hearings pursuant to N.J.A.C. 10A:71-3.14.

(q) The hearing scheduled pursuant to this section shall be conducted, when possible, prior to a parole release hearing and prior to the appropriate Board members, Board panel or the Board rendering a decision pursuant to N.J.A.C. 10A:71-3.16 and 3.18. However, nothing herein shall be construed to preclude the Board from conducting a timely parole release hearing.

(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.

10A:71-3.50 Conditions for parole release

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

1. The completion of a parole plan approved by the Board members certifying parole release and acceptable to the Bureau 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.

10A:71-3.51 Waiver of time limits

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

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

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

Recodified with amendments from 3.30.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUBCHAPTER 4. APPEALS

10A:71-4.1 Requests by inmates for reconsideration

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

1. The hearing officer, Board member, Board panel or Board was presented with inaccurate information, and

such information substantially affected the decision being appealed.

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

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

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

10A:71-4.2 Appeals by inmates

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

1. The Board panel failed to consider material facts.

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

4. 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.

5. 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, 7.16, 7.16A or 7.16B 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 from the list maintained in accordance with R.3:27-2 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.

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.

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:71-4.3 Appellate procedure

(a) All appeals submitted pursuant to N.J.A.C. 10A:71-4.1 and 4.2 shall be filed in writing and within 180 days of written notice of 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.

(b) Appeals filed by inmates shall be considered by the Board panel, Board or Chairperson, as appropriate, within 45 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) 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).

10A:71-4.4 Review of hearing officer, Board member or Board panel decisions

(a) A Board panel may, upon its own motion for good cause, 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. 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. 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.

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

v. 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).

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 Bureau 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 Bureau 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.

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, Bureau of Parole or Commission pending acceptance of a parole plan. If such suspension exceeds 60 days from the parole release date, the Bureau 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 Bureau 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.

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. 170, 373 A.2d 446 (Ch.Div.1977).

Case Notes

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

10A:71-6.4 Conditions of parole

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

1. You are required to obey all laws and ordinances.
2. You are to report in person to your District Parole Supervisor or his or her designated representative, or the designated representative of the Commission, immediately after you are released on parole from the institution, unless you have been given other written instructions by a designated representative of the Board, Bureau of Parole or Commission, and you are to report thereafter as instructed by the District Parole Supervisor or his or her designated representative, or the designated representative of the Commission.
3. You are to notify your parole officer immediately after any arrest, immediately after your being served with or receiving a complaint or summons and after accepting any pre-trial release including bail.
4. You are to immediately notify your parole officer upon the issuance by the appropriate court, pursuant to the Prevention of Domestic Violence Act of 1990, of an order granting emergency relief, a temporary or final restraining order or an order establishing conditions of release or bail in a criminal matter or offense arising out of a domestic violence situation. You are to comply with any condition established within the respective order until the order is dissolved by the appropriate court or until a condition is modified or discharged by the appropriate court.
5. You are to obtain approval of your parole officer:
 - i. For any change in your residence or employment location.
 - ii. Before leaving the state of your approved residence.
6. You are not to own or possess any firearm, as defined in N.J.S.A. 2C:39-1f, for any purpose.
7. You are not to own or possess any weapon enumerated in N.J.S.A. 2C:39-1r.
8. You are to refrain from the use, possession or distribution of a controlled dangerous substance, controlled substance analog or imitation controlled dangerous substance as defined in N.J.S.A. 2C:35-2 and N.J.S.A. 2C:35-11.
9. You are required to make payment to the Bureau of Parole or Commission, as appropriate, of any assessment,

fine, penalty, lab fee or restitution imposed by the sentencing court.

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

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

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

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

(e) The Board member or 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.

(f) 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. The parolee and the Board shall be given written notice upon the imposition of such additional conditions.

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

2. The Board panel or the Board shall notify the District Parole Supervisor or the designated representative of the Commission of its determination within 30 days of receipt of notice of the imposition of the additional special condition.

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

(g) 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.

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).

Cross References

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

10A:71-6.5 Restitution

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

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

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

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

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

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

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

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

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

New (b) added; old (b) recodified to (c).

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

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

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

10A:71-6.6 Modification of conditions

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

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

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

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

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

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

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

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

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

Cross reference changed from (d) to (e).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10A:71-6.11 Community supervision for life

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Refrain from any use of alcohol; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUBCHAPTER 7. REVOCATION OF PAROLE

10A:71-7.1 Commencement of revocation proceedings

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

10A:71-7.2 Issuance of warrants

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

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

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

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

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

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

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

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

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

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

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

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

Case Notes

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

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

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

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

10A:71-7.3 Motion for accelerated revocation

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

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

1. Such application shall include:

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

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

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

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

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

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

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

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

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

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

(h) If the prosecuting authority makes application for the initiation of revocation proceedings pursuant to this section,

he or she shall be notified of any subsequent action on the revocation case by a hearing officer, Board panel or Board.

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

(b)3 added the word "clearly"; (e) added "and/or testimony in regard to".
Amended by R.1993 d.398, effective August 16, 1993.
See: 25 N.J.R. 435(a), 25 N.J.R. 3829(a).
Amended by R.1995 d.109, effective February 21, 1995.
See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).

(b) If the Board panel modifies or overrules the determinations of the preliminary hearing officer, the panel shall take appropriate action on the parolee's case and shall notify the parolee, the parolee's attorney, and the hearing officer in writing as to its decision and the reasons therefor.

(c) The parolee shall be continued in custody or taken into custody only where, in the opinion of the Board panel, the parolee represents a danger to public safety or where the parolee may not appear at the revocation hearing.

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

(a) added "upon review"; (b) added "the parolee's attorney".

10A:71-7.12 Parole revocation hearing

(a) A parole revocation hearing shall be conducted when:

1. A hearing officer determines that probable cause exists to believe that the parolee has seriously or persistently violated the conditions of parole and that revocation of parole is desirable; or

2. The parolee has been convicted of a crime committed while on parole or in the case of a juvenile parolee adjudicated delinquent for an act which, if committed by an adult, would constitute a crime.

(b) A parole revocation hearing may be conducted when the parolee has been convicted of a disorderly persons offense committed while on parole or in the case of a juvenile parolee adjudicated delinquent for an act which, if committed by an adult, would constitute a disorderly persons offense.

(c) If the parolee has not been convicted of a crime committed while on parole or in the case of a juvenile parolee not adjudicated delinquent for an act which, if committed by an adult, would constitute a crime, the purpose of the revocation hearing shall be to determine:

1. Whether, by clear and convincing evidence, the parolee has seriously or persistently violated the conditions of parole; and

2. Whether revocation of parole is desirable.

(d) If the parolee has been convicted of a crime committed while on parole or in the case of a juvenile parolee adjudicated delinquent for an act which, if committed by an adult, would constitute a crime, the purpose of the revocation hearing shall be to determine whether, by clear and convincing evidence, good cause exists why the parolee should not be returned to confinement.

(e) The parole revocation hearing shall be conducted by a hearing officer who shall be a designated representative of the Board and who did not conduct the preliminary hearing.

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

(b): Old text deleted and new substituted; (e) added.

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

Inserted provisions relating to juvenile parolees throughout.

Case Notes

Reasonable cause to believe parolee committed crime is insufficient basis for parole revocation (citing former N.J.A.C. 10:70-6.3). *White v. New Jersey State Parole Bd.*, 136 N.J.Super. 360, 346 A.2d 415 (App. Div.1975).

10A:71-7.13 Revocation hearing; scheduling

(a) Except as provided herein, the revocation hearing shall be conducted within 60 days of the date the parolee was taken into custody as a parole violator, or, where the parolee was sentenced or committed to a State correctional or juvenile facility, within 60 days of the date of sentence or commitment.

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

(c) If the hearing officer requests a postponement of the revocation hearing, such postponement, if granted, shall not exceed 120 days from the original deadline determined pursuant to (a) above.

(d) If the request for postponement by the hearing officer or by a parolee who is not in custody is due to unanticipated scheduling problems or other emergent circumstances, such postponement shall be granted by the appropriate Board panel and shall not exceed 60 days from the originally scheduled date of the revocation hearing.

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

(d) substantially amended.

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

In (a), inserted reference to juvenile facility.

10A:71-7.14 Revocation hearing; notice of hearing

(a) It shall be the responsibility of the hearing officer to give written notice to the parolee of the time, date and place of the revocation hearing.

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

(c) Such notice shall inform the parolee of the following: the purpose of the hearing; the violation(s) of parole conditions alleged; the time, date, place and circumstances of the alleged violation(s); the name(s) of any witness(es) scheduled to appear at the hearing; and the following rights to which the parolee shall be entitled at the revocation hearing:

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

2. The right to representation by an attorney or such other qualified person as the parolee may retain, or if the parolee is determined to be indigent, the right to representation by an attorney assigned from the list maintained in accordance with R.3:27-2, provided the parolee first makes a timely and colorable claim that:

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

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

3. The right to remain silent.

4. The right to present witnesses to testify in his or her behalf as to matters relevant to the hearing.

5. The right to have the hearing officer issue a subpoena to compel the appearance of witnesses, provided that a prima facie showing is made that the prospective witnesses will provide material testimony relevant to the alleged violation(s) of parole.

6. The right to confront and cross-examine adverse witnesses, unless the hearing officer determines that such witnesses would be subject to risk of harm.

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

8. The right to waive such hearing.

9. The right to request postponement of such hearing.

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

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

Substantially amended.

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

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

10A:71-7.15 Record of the revocation hearing

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

(b) The hearing officer shall prepare a written summary which shall summarize the revocation hearing and contain the hearing officer's opinion as to whether the alleged violation(s) has been substantiated and the reason(s) therefore.

1. Such hearing summary shall be forwarded to the appropriate Board panel.

2. A copy of the hearing summary shall be forwarded to the parolee's attorney or directly to the parolee where he or she has appeared pro se in order that the parolee or his or her attorney may object to or comment on the hearing summary by submitting written exceptions to such summary. Such exceptions shall be forwarded to the appropriate Board panel within seven days after receipt of the hearing officer's hearing summary. A copy of the hearing summary shall also be forwarded to the District Parole Supervisor or the designated representative of the Commission, as appropriate.

(c) The hearing officer may verbally advise the parolee at the time of the hearing of the hearing officer's opinion as to whether the alleged violation(s) has been substantiated.

Amended by R.1980 d.434, effective October 7, 1980.

See: 12 N.J.R. 537(a), 12 N.J.R. 665(a).

(c) added.

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

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

"has" substituted for "have".

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

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

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

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

In (b)2, deleted "appropriate" preceding "District Parole Supervisor" and inserted reference to a designated representative of the Commission.

10A:71-7.16 Board panel action; schedule of future parole eligibility dates upon revocation of parole for inmates who have violated parole prior to October 17, 1994

(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)3, provided that such parolee is declared by the District Parole Supervisor or designated representative of the Commission, as appropriate, to be missing from parole supervision.

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

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

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

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

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

(d) Except as provided herein, upon revocation of parole, an adult inmate shall serve eight months, a young adult inmate shall serve six months and a juvenile inmate shall serve four months, if the inmate has violated, by non-criminal conduct, any parole condition not specified under (b), above.

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

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

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

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

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

4. Except as provided in (g) and (p) below and N.J.A.C. 10A:71-3.2, no adult inmate revoked for com-

mission of a first degree crime shall serve less than 28 nor more than 48 months.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) Except as provided herein, upon the juvenile Board panel determining that a juvenile inmate shall serve a future parole release term upon revocation of parole, the juvenile Board 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:71-7.17 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.

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:71-7.16A 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)3, provided that such parolee is declared by the designated representative of the Commission to be missing from parole supervision;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Except as provided in (j) and (q) below, a term of 10 months for the commission of a third degree crime;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The parolee has demonstrated a positive attitude to parole supervision.

2. The parolee was employed on a full-time basis.

3. The parolee's living arrangement was stable and supportive.

4. The parolee was under parole supervision for a period of at least two years.

5. The parolee has previously adjusted successfully to parole supervision.

6. The parolee has no previous convictions.

7. The parolee's original sentence was for a non-violent offense.

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

1. The parolee has demonstrated a negative attitude to parole supervision.

2. The parolee was under parole supervision for a period of less than six months.

3. The parolee has previous parole failures.

4. The parolee has extensive prior convictions.

5. The parolee has violated more than one parole condition.

6. The parolee was guilty of substance abuse while on parole.

7. The parolee's original sentence was for a violent offense.

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

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

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

2. The two-member Board panel shall notify the inmate and the inmate's attorney, in writing, pursuant to N.J.A.C. 10A:71-7.17 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".

10A:71-7.16B 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)7, 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)3, 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)7;

iv. Owning or possessing any weapon enumerated in N.J.S.A. 2C:39-1r, N.J.A.C. 10A:71-6.4(a)8;

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)9; or

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

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

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

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

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

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

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

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

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

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

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

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

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

- i. A term of 10 months for the commission of a fourth degree crime;
- ii. A term of 14 months for the commission of a third degree crime;
- iii. A term of 22 months for the commission of a second degree crime;
- iv. A term of 38 months for the commission of a first degree crime; and
- v. A term of six years, six months for the commission of the crime of murder or kidnapping.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) A two-member Board panel may decrease, pursuant to (b), (d), (f)2 or (h) above, the future parole eligibility date required pursuant to (a)3, (c), (f)1 or (g) above, or decrease pursuant to (j) above, the future parole release date required pursuant to (i) above if the two-member Board panel determines that one or more of the following mitigating factors is present:

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

(n) A two-member Board panel may increase, pursuant to (b), (d), (f)2 or (h) above, the future parole eligibility date required pursuant to (a)3, (c), (f)1 or (g) above, or increase pursuant to (j) above, the future parole release date required pursuant to (i) above, if the two-member Board panel determines that one or more of the following aggravating factors is present:

1. The parolee has demonstrated a negative attitude to parole supervision;
2. The parolee was under parole supervision for a period of less than six months;

3. The parolee has previous parole failures;

4. The parolee has extensive prior convictions;

5. The parolee has violated more than one parole condition;

6. The parolee was guilty of substance abuse while on parole; and/or

7. The parolee's original sentence was for a violent offense.

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

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

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

2. The two-member Board panel shall notify the inmate and the inmate's attorney, in writing, pursuant to N.J.A.C. 10A:71-7.17 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.

10A:71-7.17 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:71-7.16, 7.16A or 7.16B.

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.

10A:71-7.18 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.

10A:71-7.19 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.".

10A:71-7.20 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).

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.