

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

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

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

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

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

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

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

**10A:71-2.3 Subpoenas**

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

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

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

Corrected subpoena.

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

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

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

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

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

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

Deleted text "relating to the infraction".

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

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

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

**Case Notes**

A Parole Board is not intended as an appeal tribunal to relitigate prior disciplinary hearings; in the absence of an appeal to a proper tribunal, the Board may consider such hearing determinations final;

issue of rescission propriety and parole ineligibility date rescheduling becomes moot upon parole; Board could correct erroneous parole eligibility date at any time; such recalculation without notice to the inmate or a hearing was not violative of due process. *New Jersey State Parole Bd. v. Gray*, 200 N.J.Super. 343, 491 A.2d 742 (App.Div.1985).

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

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

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

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

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

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

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

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

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

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

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

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

Section substantially amended.

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

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

Introductory language added.

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

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

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

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

Amended “Primary eligibility date”.

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

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

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

#### Case Notes

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

#### 10A:71-3.2 Calculation of parole eligibility terms

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

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

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

1. Where a life term, with no mandatory-minimum term, has been imposed, the parole eligibility term shall, except as provided in (c)3 below, be 25 years.

2. Where a specific term, with no mandatory-minimum term, has been imposed, the parole eligibility term shall, except as provided in (c)3 below, be one-third of the specific term or 25 years, whichever is less.

3. Where a life term or a specific term with a judicial or statutory mandatory minimum term has been imposed, the parole eligibility term shall be the mandatory minimum term, provided that such minimum term is greater than otherwise required by subsection (c)1 or (c)2 above.

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

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

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

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

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

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

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

i. A new book eligibility date shall be established by adding the additional term established pursuant to N.J.A.C. 10A:71-3.21 to the date the inmate is committed to the custody of the Department.

ii. In the case of an adult inmate, the new book date shall include commutation credits based on the additional term only.