

7:27B-5.8 Specifications for motor vehicle testing equipment for use in the New Jersey Enhanced Inspection and Maintenance Program

[(a) Equipment used for performing the idle test, as set forth at N.J.A.C. 7:27B-5.3(b), and the two speed idle test, as set forth at N.J.A.C. 7:27B-5.4, shall conform with the requirements for such equipment at 40 CFR 85.2225, Steady state test exhaust analysis system—EPA 91, and all subsequent revisions thereto, incorporated herein by reference.

(b) Equipment used for performing the fuel cap leak test, as set forth at N.J.A.C. 7:27B-5.7, shall be in accordance with the applicable specifications described in the EPA technical guidance document EPA420 R-00-007, entitled IM240 and Evap Technical Guidance, incorporated herein by reference. A copy of this EPA technical guidance document may be obtained from the Public Access Center in the Department of Environmental Protection.]

[(c) Equipment used for performing the OBD inspection, as set forth at N.J.A.C. 7:27B-5.6, shall be approved by the Department as provided at N.J.A.C. 7:27B-5.2(c) and shall conform with the provisions of 40 CFR 85-2231, and all subsequent revisions thereto, incorporated herein by reference.

CORRECTIONS

(a)

STATE PAROLE BOARD

Parole Board Rules

Division of Parole

Proposed Amendments: N.J.A.C. 10A:71-2.2, 2.5, 4.2, 6.4, 6.11, 6.12, 7.5, 7.13, 7.17, 7.17A, 7.17B, 8.2, 8.3, 8.5, 8.6, and 9.6 and 10A:72-2.5, 3.6, 3.9, 10.1, 10.2, 10.3, 10.4, and 10.7

Proposed Repeal and New Rule: N.J.A.C. 10A:71-8.7

Proposed New Rules: N.J.A.C. 10A:71-3.57 and 4.4 and 10A:72-2.6

Authorized By: New Jersey State Parole Board, James T. Plousis, Chairman.

Authority: N.J.S.A. 30:4-123.48.d, 30:4-123.51.b, and 30:4-123.92.d.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2016-078.

Submit comments by July 15, 2016, to:

David Thomas
Executive Director
New Jersey State Parole Board
P.O. Box 862
Trenton, NJ 08625-0862
Fax: 609-292-4493
E-mail: RulemakingComments@spb.state.nj.us

The agency proposal follows:

Summary

The Parole Act of 1979, N.J.S.A. 30:4-123.45 et seq., established a full-time State Parole Board (Board). The Board is authorized by the Parole Act to promulgate reasonable rules and regulations consistent with the Parole Act as may be necessary for the proper discharge of its responsibility. The Board's rules are specified in the New Jersey Administrative Code at N.J.A.C. 10A:71 and 72.

The Board has reviewed N.J.A.C. 10A:71 and 72 and proposes to amend certain sections of these chapters and proposes new N.J.A.C. 10A:71-3.57 and 4.4 and 10A:72-2.6.

Effective August 1, 2010, N.J.S.A. 30:4-123.67 was amended to require that the appropriate Board panel and the Juvenile Justice Commission (Commission) enter into formal parole contract agreements with eligible individual parolees or inmates; that the parole contract agreements shall be reduced to writing and stipulate individual programs

of education, training, or other activity; and that the successful completion of the stipulated program(s) shall result in a specified reduction of the parolee's parole term pursuant to N.J.S.A. 30:4-123.66 or the inmate's primary parole eligibility date pursuant to N.J.S.A. 30:4-123.52. Proposed new N.J.A.C. 10A:71-3.57 codifies the procedures for the processing of parole contract agreements for juvenile inmates.

Proposed new N.J.A.C. 10A:71-4.4 represents the codification of the standard procedures utilized by the Board in processing appeals of decisions rendered by the Division of Parole.

Proposed new N.J.A.C. 10A:72-2.6 represents the codification of the standard procedures utilized by the Division of Parole in assessing whether an offender serving a special sentence of community or parole supervision for life for an offense committed by the offender involving a minor child may initiate, establish, or maintain unsupervised contact with a minor.

The Board also proposes several amendments that pertain to the polygraph examination process as a result of a recent Superior Court–Appellate Division decision. On January 21, 2016, the Superior Court – Appellate Division in the matter of *J.B. v. N.J.S.P.B.*, 444 *N.J. Super* 115 (App.Div. 2016) upheld the validity of the Board's polygraph program, subject to certain important conditions and modifications. In particular, the Appellate Division disallowed the Board from using the machine-generated technical results of such examinations as evidence to justify a curtailment of an offender's activities. The Appellate Division also ruled that the Board's rules and practices to protect the offender's privileges against self-incrimination should be enhanced.

The Appellate Division was persuaded that it would be beneficial for the Board to revise its disclosure and examination procedure rules to spell out more clearly what uses of the polygraph testing are allowed and disallowed. In particular, the limitations on the non-evidential use of the machine-generated test results, as mandated in the opinion, should be made known to test subjects, so that they understand how the testing can and cannot be used by the Board. The Appellate Division noted that these updated policies should be formally adopted through rule-making. The Appellate Division required the Board to complete same within six months of the date of the opinion.

Various proposed amendments provide for minor language corrections and deletion of cross-references of Administrative Code citations. The proposed substantive and procedural amendments and the new rules are as follows:

Proposed new N.J.A.C. 10A:71-2.2(a)6 clarifies which State Parole Board standard operating procedures and training materials are considered confidential. Proposed new N.J.A.C. 10A:72-2.2(a)6 specifies that standard operating procedures, manuals, and training materials, that may reveal the Board's surveillance, security, tactical, investigative, or operational techniques, measures, or procedures, which, if disclosed, would create a risk to the safety of persons, property, electronic data, or software, or compromise the Board's ability to effectively conduct investigations are designated as confidential. This provision is to be narrowly construed to prevent disclosure of information that could risk jeopardizing safety or compromising the ability to conduct investigations.

Proposed new N.J.A.C. 10A:71-2.5(i) specifies that requests for on-site inspection of records shall be conducted during the regular business hours of the custodian of records at the office of the custodian.

Proposed new N.J.A.C. 10A:71-3.57(a) specifies that the juvenile Board panel and the Commission shall enter into formal written agreements with individual juvenile inmates as authorized by N.J.S.A. 30:4-123.67 and that the agreement shall stipulate the individual programming or activity that, if successfully completed, will result in a specified reduction in the juvenile inmate's judicial restriction date.

Proposed new N.J.A.C. 10A:71-3.57(b) specifies that the agreement shall be entered into within two months of the juvenile inmate's admission to a correctional facility under the supervision of the Commission.

Proposed new N.J.A.C. 10A:71-3.57(c) specifies that a juvenile inmate may decline to enter an agreement and that, if declined, the juvenile inmate may not at a later date enter into an agreement.

Proposed new N.J.A.C. 10A:71-3.57(d) specifies that in order to be eligible to enter into an agreement, the juvenile inmate must not be past the judicial restriction date.

Proposed new N.J.A.C. 10A:71-3.57(e) specifies that the agreement shall be in writing, that the agreement shall specify the terms, and that the terms of the agreement are non-negotiable.

Proposed new N.J.A.C. 10A:71-3.57(f) specifies that the agreement becomes effective upon signing, that the juvenile inmate is to receive a copy of the agreement, that the agreement expires upon the judicial restriction date being reached, and that the agreement may be terminated by the Board prior to the judicial restriction date.

Proposed new N.J.A.C. 10A:71-3.57(g) specifies that the schedule of reductions shall be a component of the agreement and that the judicial restriction date will be reduced by the appropriate number of days upon successful completion of the specified program(s).

Proposed new N.J.A.C. 10A:71-3.57(h) specifies that the Board will monitor the juvenile inmate's compliance with the agreement at least once every 12 months.

Proposed new N.J.A.C. 10A:71-3.57(i) specifies that the Board shall notify the sentencing court upon the juvenile inmate successfully completing the specified program and shall ascertain whether the court consents to the specified reduction in the judicial restriction date.

Proposed new N.J.A.C. 10A:71-3.57(j) specifies the conditions that must be met in order for the juvenile inmate to receive the reductions specified in the agreement.

Proposed new N.J.A.C. 10A:71-3.57(k) specifies that the judicial restriction date shall be reduced by the specified number of days upon the Board confirming that the juvenile inmate has met the conditions in proposed new N.J.A.C. 10A:71-3.57(j).

Proposed new N.J.A.C. 10A:71-3.57(l) specifies that the juvenile inmate will be notified in writing whether the judicial restriction date will or will not be reduced and, if not reduced, the reason(s) therefor.

Proposed new N.J.A.C. 10A:71-3.57(m) specifies the basis on which the Board may terminate the agreement.

Proposed new N.J.A.C. 10A:71-3.57(n) specifies that the Board will notify the juvenile inmate in writing if the agreement is terminated and the reason(s) therefor.

Proposed new N.J.A.C. 10A:71-3.57(o) specifies that if the agreement is terminated, the juvenile inmate is not eligible for a reduction for any program that may have been completed during the 12-month monitoring period.

Proposed new N.J.A.C. 10A:71-3.57(p) specifies that a determination to terminate an agreement may be appealed by the juvenile inmate to the Board. The appeal must be filed in writing within 90 days of receipt of notice of the determination and must include the basis of the appeal.

Proposed new N.J.A.C. 10A:71-3.57(q) recognizes that the Commission has the authority to transfer a juvenile inmate to any facility, specifies that the terms of the agreement shall not be deemed to restrict the authority of the Commission to transfer a juvenile inmate to any facility, and specifies that the terms of the agreement shall not be deemed to require the Commission to provide uniform programming at each facility to assist a juvenile inmate's completion of specific programs after having been transferred from one housing facility to another housing facility.

Proposed new N.J.A.C. 10A:71-4.2(b) establishes that an appeal filed beyond the time period specified in N.J.A.C. 10A:71-4.2(a) (90 days) shall be considered on its merits if it is determined that the appeal was delayed for good cause and provides a definition for good cause.

Proposed new N.J.A.C. 10A:71-4.4(a) specifies that a determination by a District Parole Supervisor or his or her designated representative shall be appealable to the Director, Division of Parole, or his or her designated representative and establishes the criteria that must be met and the time frames for consideration of the appeal.

Proposed new N.J.A.C. 10A:71-4.4(b) specifies that a determination of the Director, Division of Parole, or his or her designated representative pursuant to N.J.A.C. 10A:71-4.4(a) shall be appealable to a Board panel and establishes the criteria that must be met and the time frames for consideration of the appeal.

Proposed new N.J.A.C. 10A:71-4.4(c) specifies that a determination of the Board panel pursuant to N.J.A.C. 10A:71-4.4(b) shall be appealable to the Board and establishes the criteria that must be met and the time frames for consideration of the appeal.

The introductory phrase of N.J.A.C. 10A:71-6.4(a) reflects that "[t]he certificate of parole shall contain the following general conditions of parole" and each general condition begins with "[y]ou are to." The proposed amendments to N.J.A.C. 10A:71-6.4(a) modify the introductory phrase to reflect that "[a]n offender granted parole shall comply with the following general conditions of parole" and deletes "[y]ou are to" from the beginning of each general condition. The proposed amendments to N.J.A.C. 10A:71-6.4(a) are intended to be consistent with the condition format specified in N.J.A.C. 10A:71-6.11(b) (community supervision for life) and 6.12(d) (parole supervision for life).

The proposed amendment to N.J.A.C. 10A:71-6.4(a)4 relocates the second sentence as new paragraph (a)5. The new paragraph also clarifies the type of order that the condition refers to and includes language that is consistent with the language in N.J.A.C. 10A:71-6.4(a)4. The intent is to clarify that the specified requirements of notification and compliance constitute two separate and distinct conditions.

Existing N.J.A.C. 10A:71-6.4(a)13 is proposed for relocation as N.J.A.C. 10A:71-6.4(a)6. Existing N.J.A.C. 10A:71-6.4(a)4, proposed new N.J.A.C. 10A:71-6.4(a)5, and proposed new N.J.A.C. 10A:71-6.4(a)6 are all reorganized as the three paragraphs reference the Prevention of Domestic Violence Act.

The proposed amendment to N.J.A.C. 10A:71-6.11(b)4 deletes the second sentence and relocates the sentence as new paragraph (b)5. Relocated N.J.A.C. 10A:71-6.11(b)5 also clarifies the type of order that the condition refers to and includes language that is consistent with the language in existing N.J.A.C. 10A:71-6.11(b)5. The intent is to clarify that the specified requirements of notification and compliance constitute two separate and distinct conditions.

Existing N.J.A.C. 10A:71-6.11(b)18 is proposed for relocation as paragraph (b)6. Existing N.J.A.C. 10A:71-6.11(b)4, proposed new N.J.A.C. 10A:71-6.11(b)5, and proposed new N.J.A.C. 10A:71-6.11(b)6 are all reorganized as all three paragraphs reference the Prevention of Domestic Violence Act.

The proposed amendment to N.J.A.C. 10A:71-6.12(d)4 relocates the second sentence as paragraph (d)5. N.J.A.C. 10A:71-6.12(d)5 is also amended to clarify the type of order that the condition refers to and includes language that is consistent with the language in N.J.A.C. 10A:71-6.12(d)4. The intent is to clarify that the specified requirements of notification and compliance constitute two separate and distinct conditions.

Existing N.J.A.C. 10A:71-6.12(d)18 is proposed for relocation as paragraph (d)6. Existing N.J.A.C. 10A:71-6.12(d)4, proposed new N.J.A.C. 10A:71-6.12(d)5, and proposed new N.J.A.C. 10A:71-6.12(d)6 are all reorganized as all three paragraphs reference the Prevention of Domestic Violence Act.

The proposed amendments to N.J.A.C. 10A:71-7.5(c) and 7.13(c) specify that if a parolee requests a postponement of the preliminary hearing or revocation hearing, respectively, such postponement shall be granted by the hearing officer for good cause; that the request shall be made in writing; and that the hearing officer shall record such request "and the determination of the hearing officer" in the parolee's case record.

The proposed amendments to N.J.A.C. 10A:71-7.17 delete cross-references to the citations of certain parole conditions as a number of the cross-references are inaccurate and were not amended when previous amendments to N.J.A.C. 10A:71-6.4 were adopted.

The proposed amendments to N.J.A.C. 10A:71-7.17A and 7.17B delete cross-references to the citations of certain parole conditions and inserts the language of the respective condition, in lieu of the citation of the parole condition, as a number of the cross-references are inaccurate and were not amended when previous amendments to N.J.A.C. 10A:71-6.4 were adopted.

The proposed amendment to N.J.A.C. 10A:71-7.17B(a)3ii relocates the second sentence as new subparagraph (a)3iii. N.J.A.C. 10A:71-7.17B(a)3iii also clarifies the type of order that the condition refers to and includes language that is consistent with the language in N.J.A.C. 10A:71-7.17B(a)3ii. The intent is to clarify that the specified requirement of notification and compliance constitute two separate and distinct conditions.

Proposed new N.J.A.C. 10A:71-7.17B(a)3iv establishes that if an inmate has violated parole by failing to refrain from behavior, which results in the issuance of a final restraining order pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., or the provisions of a similar Federal or state statute, that an adult inmate shall serve 12 months, a young adult inmate shall serve nine months, and a juvenile inmate shall serve six months.

The proposed amendments to N.J.A.C. 10A:71-8.2(a) modify the eligibility requirements for an application for a Certificate of Good Conduct. The amendments to N.J.A.C. 10A:71-8.2(a)1 and 2 expand the eligibility criteria from those offenders who were paroled to those offenders who were supervised or are presently supervised by the Board.

Proposed new N.J.A.C. 10A:71-8.2(a)3 and 4 establish that an applicant is ineligible if the applicant has been convicted of a new crime within five years from the date of application or the applicant has pending charges or outstanding warrants, respectively.

The proposed deletion of N.J.A.C. 10A:71-8.3(d) removes an offender's ability to restrict the Board's investigation of an application for a Certificate of Good Conduct.

The proposed amendment to N.J.A.C. 10A:71-8.5(a) clarifies that the Board is to provide written notice to an applicant of the Board's determination regarding the application for a Certificate of Good Conduct.

Proposed new N.J.A.C. 10A:71-8.5(b) establishes that the original copy of the Certificate of Good Conduct, if granted, shall be maintained by the Board.

Proposed new N.J.A.C. 10A:71-8.5(d) establishes that a copy of the Certificate of Good Conduct, if granted, shall be provided to the applicant.

Proposed new N.J.A.C. 10A:71-8.5(e) establishes that the Certificate of Good Conduct provided to the applicant shall include a statement that the document is a copy and that a licensing authority should confirm with the Board that the certificate remains valid.

Proposed new N.J.A.C. 10A:71-8.5(f) establishes that if a Certificate of Good Conduct is revoked, the Board shall provide written notice to the person who is the subject of the certificate, the Secretary of State, and the licensing authority and states the time period for the notification.

Proposed new N.J.A.C. 10A:71-8.6(b) establishes that a person who is the subject of the Certificate of Good Conduct shall be provided written notice prior to the Board rendering a decision to revoke the certificate and that the person has the opportunity to submit a written statement regarding same.

Proposed new N.J.A.C. 10A:71-8.6(c) establishes that upon notice of the decision by the Board to revoke a Certificate of Good Conduct, the person who is the subject of the certificate shall surrender the certificate to the Board.

The proposed repeal and replacement of N.J.A.C. 10A:71-8.7 is intended to clarify that a decision to grant or revoke a Certificate of Good Conduct shall be rendered pursuant to N.J.A.C. 10:71-1.2(h) and (i).

The proposed amendment to N.J.A.C. 10A:71-9.6(d) specifies that the original copy of the Certificate Suspending Certain Employment, Occupational Disabilities or Forfeitures, if granted, shall be maintained by the Board, rather than the Secretary of State.

Proposed new N.J.A.C. 10A:71-9.6(e) specifies that a copy of the Certificate Suspending Certain Employment, Occupational Disabilities or Forfeitures, if granted, shall be filed with the Secretary of State.

The proposed amendment to recodified N.J.A.C. 10A:71-9.6(g) specifies that the statement on the Certificate Suspending Certain Employment, Occupational Disabilities or Forfeitures shall reflect that the certifying authority, licensing authority, or public employer shall confirm with the Board, rather than the Secretary of State, that the certificate remains valid.

The proposed amendment to N.J.A.C. 10A:72-2.5(a) clarifies that the approval is granted by the District Parole Supervisor "or designee."

The proposed amendment to N.J.A.C. 10A:72-2.5(b) clarifies that the assessment is conducted by the District Parole Supervisor "or designee."

The proposed amendments to N.J.A.C. 10A:72-2.5(c) clarify that the offender is requesting the approval of the District Parole Supervisor or designee to reside with a minor child and that the written statement

required under the subsection must be submitted by a parent or "legal" guardian.

Proposed new N.J.A.C. 10A:72-2.6(a) prohibits an offender serving a special sentence of community or parole supervision for life for an offense committed by the offender involving a minor child from initiating, establishing, or maintaining unsupervised contact with a minor, unless approval is provided by the District Parole Supervisor or designee or by the appropriate court.

Proposed new N.J.A.C. 10A:72-2.6(b) requires a parent or legal guardian (the parent or legal guardian cannot be the offender) of a minor child to provide a written statement to the District Parole Office requesting that the offender be permitted to initiate, establish, or maintain unsupervised contact with the minor child. The statement must include an acknowledgement by the parent or legal guardian of the circumstances of the offense committed by the offender.

Proposed new N.J.A.C. 10A:72-2.6(c) requires the submission to the District Parole Supervisor or designee of an assessment of the offender by a sex offender treatment provider designated by the District Parole Supervisor or designee. The subsection identifies the various factors to be addressed in the assessment.

Proposed new N.J.A.C. 10A:72-2.6(d) requires that upon receipt of the assessment by the District Parole Supervisor or designee, he or she shall evaluate the matter and determine whether the offender may be permitted to initiate, establish, or maintain unsupervised contact with the minor child.

Proposed new N.J.A.C. 10A:72-2.6(e) requires that the District Parole Supervisor or designee advise the offender in writing of the decision and the basis for same. The decision is required to be recorded in the chronological supervision report.

Proposed new N.J.A.C. 10A:72-3.6(b)6 specifies that the polygraph examination disclosure form shall indicate that the results of the pre-examination interview and post-examination interview and the machine-generated results of the polygraph examination may be used for therapeutic treatment purposes.

Proposed new N.J.A.C. 10A:72-3.6(b)7 specifies that the polygraph examination disclosure form shall indicate that the machine-generated results of the polygraph examination shall not be relied on or cited as evidence to support the filing of criminal charges or to justify the imposition or modification of sanctions, such as special conditions.

Proposed new N.J.A.C. 10A:72-3.6(b)8 specifies that the polygraph examination disclosure form shall indicate that the results of the pre-examination interview and post-examination interview may be relied on or cited as evidence to support the filing of criminal charges or to justify the imposition or modification of sanctions, such as special conditions.

Recodified N.J.A.C. 10A:72-3.6(b) is proposed for amendment to clarify that the polygraph examination disclosure form shall indicate that the "machine-generated" results of the polygraph examination shall not be used as evidence in court to prove that a violation of the special sentence of community or parole supervision for life or condition of discharge has occurred.

Proposed new N.J.A.C. 10A:72-3.9(c) specifies that the results of the pre-examination interview and post-examination interview and the machine-generated results of the polygraph examination may be used for therapeutic treatment purposes.

Proposed new N.J.A.C. 10A:72-3.9(d) specifies that the machine-generated results of the polygraph examination shall not be relied on or cited as evidence to support the filing of criminal charges or to justify the imposition or modification of sanctions, such as special conditions.

Proposed new N.J.A.C. 10A:72-3.9(e) specifies that the results of the pre-examination interview and post-examination interview may be relied on or cited as evidence to support the filing of criminal charges or to justify the imposition or modification of sanctions, such as special conditions.

Recodified N.J.A.C. 10A:72-3.9 is proposed for amendment to specify that, pursuant to N.J.S.A. 30:4-123.88, the "machine-generated" results of the polygraph examination shall not be used as evidence in court to prove that a violation of the special sentence of community or parole supervision for life or condition of discharge has occurred.

Proposed new N.J.A.C. 10A:72-10.1(a)4 establishes that the imposition of a special condition of Global Positioning System (GPS)

monitoring is permitted for those offenders serving a special sentence of community or parole supervision for life or a mandatory period of parole supervision pursuant to N.J.S.A. 2C:43-7.2.c. The imposition of a special condition of GPS monitoring would require that the Division of Parole follow the procedures set forth for the effectuation of the general condition of curfew (community and parole supervision for life cases), the imposition of special conditions of curfew (mandatory parole supervision cases), and electronic monitoring (community and parole supervision for life cases and mandatory parole supervision cases) as specified in N.J.A.C. 10A:72-10. Accordingly, proposed amendments to N.J.A.C. 10A:72-10.1, 10.2, 10.3, 10.4, and 10.7 and the heading of the subchapter add reference to GPS monitoring to the procedures set forth for the imposition of a curfew or electronic monitoring. Additionally, it is proposed that N.J.A.C. 10A:72-10.1(b)2 and 3 be merged to correct an impermissible Administrative Code codification.

The Board has provided a 60-day comment period on this notice of proposal, therefore, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

Proposed new N.J.A.C. 10A:71-2.2(a)6 specifies which standard operating procedures, manuals, and training materials are deemed confidential. The specification is intended to provide guidance to the public and, therefore, will have a positive social impact.

The proposed amendment to N.J.A.C. 10A:71-2.5(i) specifies where and when on-site inspection of records pursuant to the Open Public Records Act are conducted. The specification as to where and when on-site inspection of records are conducted is intended to provide guidance to the public and, therefore, will have a positive social impact.

Proposed new N.J.A.C. 10A:71-3.57, which is based on the amendment to N.J.S.A. 30:4-123.67, will impact on certain juvenile inmates. Formal parole contract agreements may be entered into between the State Parole Board, the Commission, and an eligible juvenile inmate. Upon successful completion of the components of the parole contract agreement and with the consent of the sentencing court, the juvenile inmate's judicial restriction date will be reduced by the credit reduction specified in the parole contract agreement.

Proposed new N.J.A.C. 10A:71-3.57 will also impact on the internal operation of the State Parole Board. The Board will be required to: determine which juvenile inmates are eligible to enter into parole contract agreements; monitor compliance with the parole contract agreement; ensure the appropriate processing of documentation and ensure required notifications are performed; and, upon successful completion of the parole contract agreement and the grant of the specified reduction, ensure that the juvenile inmate's judicial restriction date is reduced accordingly.

The proposed amendments to N.J.A.C. 10A:71-4.2(b) establish that an appeal filed beyond the specified time period may be considered if it is determined that the appeal was delayed for good cause and provide what circumstances constitute good cause. Permitting an appeal to be considered if delayed for good cause and the specification of the circumstances that constitute good cause is intended to provide guidance to the offender and, therefore, will have a positive social impact.

Proposed new N.J.A.C. 10A:71-4.4 specifies the procedures for appealing Division of Parole decisions, which is consistent with the Board's current practices. The codification of the procedures for an appeal of a Division of Parole decision is intended to provide guidance to the offender and, therefore, will have a positive social impact.

The proposed amendments to N.J.A.C. 10A:71-6.4, 6.11, and 6.12 specify the conditions an offender is required to abide by that include reference to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., or the provisions of a similar Federal or state statute. The amendments provide clarification to the offender of the conditions the offender is to comply with and, therefore, will have a positive social impact.

The proposed amendments to N.J.A.C. 10A:71-7.5 and 7.13 provide that a request for a postponement of the preliminary hearing or revocation hearing, respectively, may be granted by the hearing officer for good cause and that the hearing officer shall record such request and the determination of the hearing officer. The Board does not anticipate a negative social impact as a result of the proposed amendments.

The proposed amendments to N.J.A.C. 10A:71-7.17, 7.17A, and 7.17B provide clarification as to the schedule of future eligibility dates upon revocation by removing inaccurate cross-references to Administrative Code citations and, therefore, will have a positive social impact by ensuring that offenders are cognizant as to the application of the appropriate schedule of future parole eligibility dates.

The proposed amendments to N.J.A.C. 10A:71-8 and 9 clarify the eligibility criteria and procedures for an offender to obtain a Certificate of Good Conduct or a Certificate Suspending Certain Employment, Occupational Disabilities or Forfeitures, respectively, and make the procedures for the processing of both certificates similar. The Board does not anticipate a negative social impact as a result of the proposed amendments.

The proposed amendment to N.J.A.C. 10A:72-2.5(c) provides clarification that the guardian of the minor refers to the legal guardian of the minor. The proposed amendment is to provide clarification to offenders and, therefore, will have a positive social impact.

Proposed new N.J.A.C. 10A:72-2.6 establishes the procedure by which an offender, who has committed a sexual offense involving a minor child, may seek authorization to initiate, establish, or maintain unsupervised contact with a minor. Proposed new N.J.A.C. 10A:72-2.6 is anticipated to have a positive social impact, by ensuring that offenders are aware of the procedures utilized by the Division of Parole in assessing whether an offender serving a special sentence of community or parole supervision for life for an offense committed by the offender involving a minor child may initiate, establish, or maintain unsupervised contact with a minor child.

Proposed new N.J.A.C. 10A:72-3.6(a)6, 7, 8, and 9 and 3.9(c), (d), (e), and (f) provide clarification as to what uses of the polygraph examination testing are allowed and disallowed. The proposed new regulations provide clarification to offenders and, therefore, will have a positive social impact.

Offenders serving a special sentence of community supervision for life, offenders serving a special sentence of parole supervision for life, and offenders serving a mandatory period of parole supervision will be affected by the proposed new rules for the imposition of a special condition of GPS monitoring in the appropriate case. The proposed new rules impact on the staff of the Division of Parole, certain central office staff of the Board, and Board Members as the proposed new rules provide for the formal establishment of a procedure for the imposition of a condition of GPS; the processing of an offender's case for presentation of the matter to a Board panel; the review of the offender's case by a Board panel; and the rendering by a Board panel of a decision in the offender's case.

Economic Impact

The State Parole Board does not believe that additional funding is necessary to implement the proposed amendments and new rules. It is anticipated that the cost of implementing the proposed amendments and new rules will be met by the State Parole Board through the established budget process with funding presently allocated by the State.

In the cases of certain juvenile inmates, the potential exists that the judicial restriction dates may be advanced upon the successful completion of a parole contract agreement. If a judicial restriction date is advanced and if the juvenile inmate is granted parole on the advanced judicial restriction date, the Commission may achieve a benefit by the release of the inmate on the advanced judicial restriction date. However, the economic impact cannot be readily identified.

Certain persons convicted of a criminal offense who were not previously eligible for a Certificate of Good Conduct may, by the granting and issuance of a certificate, obtain employment. It is those persons who are able to obtain appropriate employment with the assistance of the certificate that will derive the main economic impact. However, the economic impact cannot be readily identified.

Federal Standards Statement

The proposed amendments and new rules are not proposed under the authority of or in order to implement, comply with, or participate in any program established under Federal law or under State statute that incorporates or refers to Federal law, standards, or requirements. An

analysis of the rules pursuant to Executive Order No. 27 (1994), P.L. 1995, c. 65 is, therefore, not required.

Jobs Impact

No jobs are expected to be lost or created as a result of the proposed amendments or the proposed new rules.

Agriculture Industry Impact

The proposed amendments and new rules will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

The proposed amendments and new rules impose no reporting, recordkeeping, or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments and new rules pertain to the State Parole Board's execution of its statutory functions and responsibilities regarding the administration of the parole process and the supervision of offenders subject to the Board's jurisdiction. A regulatory flexibility analysis is, therefore, not required.

Housing Affordability Impact Analysis

The proposed amendments and new rules pertain to the State Parole Board's execution of its statutory functions and responsibilities regarding the administration of the parole process and the supervision of offenders subject to the Board's jurisdiction. The proposed amendments and new rules will, therefore, have no impact on the affordability of housing nor will the changes increase or decrease in the average cost of housing.

Smart Growth Development Impact Analysis

The proposed amendments and new rules pertain to the State Parole Board's execution of its statutory functions and responsibilities regarding the administration of the parole process and the supervision of offenders subject to the Board's jurisdiction. The proposed amendments and new rules will, therefore, not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

CHAPTER 71
PAROLE

SUBCHAPTER 2. RECORDS; GENERAL ADMINISTRATIVE PROVISIONS

10A:71-2.2 Records designated confidential

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

1.-5. (No change.)

6. Standard operating procedures, manuals, and training materials, that may reveal the Board's surveillance, security, tactical, investigative, or operational techniques, measures, or procedures, which, if disclosed, would create a risk to the safety of persons, property, electronic data, or software, or compromise the Board's ability to effectively conduct investigations;

Recodify existing 6.-9. as 7.-10. (No change in text.)

(b)-(d) (No change.)

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

(a)-(h) (No change.)

(i) Requests for on-site inspection of records shall be conducted during the regular business hours of the custodian of records at the office of the custodian.

[(i)] (j) (No change in text.)

SUBCHAPTER 3. PAROLE RELEASE HEARINGS

10A:71-3.57 Parole contract agreements; juvenile inmates

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

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

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

(d) In order to be eligible to enter a parole contract agreement, a juvenile inmate must not be past the judicial restriction date.

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

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

(g) Pursuant to the schedule of reductions, which shall be a component of the parole contract agreement, the juvenile inmate's judicial restriction date will be reduced by the appropriate number of days, as indicated in the schedule of reductions, upon the juvenile inmate's completion of the specified program(s). The grant of the appropriate reduction shall be subject to the provisions of (j) below.

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

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

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

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

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

3. The juvenile inmate must not have been adjudicated guilty of the commission of any disciplinary infraction pursuant to N.J.A.C. 13:101; and

4. The sentencing court must consent to any reduction in the judicial restriction date.

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

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

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

1. The juvenile inmate has been adjudicated guilty of any disciplinary infraction pursuant to N.J.A.C. 13:101; or

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

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

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

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

(q) The Commission has the authority to transfer a juvenile inmate to any facility for the proper and secure incarceration of the juvenile inmate. The terms of the parole contract agreement shall not be deemed to restrict the authority of the Commission to classify and transfer a juvenile inmate to any facility for the proper and secure incarceration of the juvenile inmate. The terms of the parole contract agreement shall not be deemed to require that the Commission provide uniform programming at each facility in order to assist a juvenile inmate's participation in, or completion of, specific programs after the juvenile inmate has been transferred from a housing facility to another housing facility.

SUBCHAPTER 4. APPEALS

10A:71-4.2 Appellate procedure

(a) (No change.)

(b) An appeal filed beyond the time period specified in (a) above shall be considered by the Board panel, Board, or Chairperson, as appropriate, on its merits, if it is determined by the Board panel, Board, or Chairperson, as appropriate, that the filing of the appeal was delayed for good cause. Good cause exists in circumstances where it is shown that:

1. The delay in filing the appeal was due to circumstances beyond the control of the inmate; or

2. The inmate delayed filing the appeal for circumstances that could not have been reasonably foreseen or prevented.

Recodify existing (b)–(f) as (c)–(g) (No change in text.)

10A:71-4.4 Review of Division of Parole decisions

(a) A determination by a District Parole Supervisor or his or her designated representative shall be appealable to the Director, Division of Parole, or his or her designated representative.

1. An appeal may be submitted, provided one of the following criteria is met:

i. The District Parole Supervisor or his or her representative failed to consider material facts;

ii. The District Parole Supervisor or his or her representative's decision is contrary to written Board policy or procedure; or

iii. The District Parole Supervisor or his or her representative participating in the deliberations or disposition of the case has failed to comply with the Board's professional code of conduct.

2. An appeal shall be made in writing to the Director, Division of Parole, within 30 days of the decision, unless good cause exists and shall contain the reasons for the appeal and the criteria under which the appeal is submitted. Good cause exists in circumstances where it is shown that:

i. The delay in filing the appeal was due to circumstances beyond the control of the offender; or

ii. The offender delayed filing the appeal for circumstances that could not have been reasonably foreseen or prevented.

3. The Director, Division of Parole, or his or her representative shall consider the appeal within 30 days from the date the appeal was received.

4. The Director, Division of Parole, or his or her representative shall advise the District Parole Supervisor or his or her representative and the offender in writing within 14 days of the decision.

(b) The determination of the Director, Division of Parole, or his or her representative rendered pursuant to (a) above shall be appealable to a Board panel.

1. A determination by the Director, Division of Parole, or his or her representative shall be appealable to a Board panel provided one of the following criteria is met:

i. The Director, Division of Parole, or his or her representative failed to consider material facts;

ii. The decision of the Director, Division of Parole, or his or her representative is contrary to written Board policy or procedure; or

iii. The Director, Division of Parole, or his or her representative participating in the deliberations or disposition of the case has failed to comply with the Board's professional code of conduct.

2. An appeal shall be made to the Chairperson in writing within 30 days of the decision being rendered by the Director, Division of Parole, or his or her representative unless good cause exists and shall contain the reasons for the appeal and the criteria under which the appeal is submitted. Good cause exists in circumstances where it is shown that:

i. The delay in filing the appeal was due to circumstances beyond the control of the offender; or

ii. The offender delayed filing the appeal for circumstances that could not have been reasonably foreseen or prevented.

3. The appropriate Board panel, as designated by the Chairperson, shall consider the appeal within 30 days from the date the appeal was received.

4. The Board panel shall advise the Director, Division of Parole, or his or her representative and the offender in writing within 14 days of the decision.

(c) The decision of the Board panel rendered pursuant to (b) above shall be appealable to the Board.

1. The decision by the Board panel shall be appealable to the Board provided one of the following criteria is met:

i. The Board panel failed to consider material facts;

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

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

2. The appeal shall be made in writing to the Chairperson within 30 days of the decision being rendered by the Board panel unless good cause exists and shall contain the reasons for the appeal and the criteria under which the appeal is submitted. Good cause exists in circumstances where it is shown that:

i. The delay in filing the appeal was due to circumstances beyond the control of the offender; or

ii. The offender delayed filing the appeal for circumstances that could not have been reasonably foreseen or prevented.

3. The Board shall consider the appeal within 90 days from the date the appeal was received.

4. The Board shall advise the Director, Division of Parole, or his or her representative and the offender in writing within 14 days of the decision.

SUBCHAPTER 6. SUPERVISION

10A:71-6.4 Conditions of parole

(a) [The certificate of] **An offender granted** parole shall [contain] **comply with** the following general conditions of parole:

1. [You are required to obey] **Obey** all laws and ordinances.

2. [You are to report] **Report** in person to [your] **the** District Parole Supervisor or his or her designated representative, or the designated representative of the Commission, immediately after [you are] **the offender** is released on parole from the institution, unless [you have] **the offender has** been given other written instructions by a designated representative of the Board or Commission, and [you are] **the offender is**

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] **Notify** the assigned parole officer no later than the next business day after any arrest, after being served with or receiving a complaint or summons, and after accepting any pre-trial release including bail.

4. [You are to notify] **Notify** the assigned parole officer no later than the next business day upon the issuance by the appropriate court, pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., or the provisions of a similar Federal or state statute, of an order granting emergency relief, a temporary or final restraining order, or an order establishing conditions of release or bail in a criminal matter or offense arising out of a domestic violence situation.

5. [You are to comply] **Comply** with any condition established within [the respective] **an order granting emergency relief, a temporary or final restraining order, issued by the appropriate court, pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., or the provisions of a similar Federal or state statute, or an order establishing conditions of release or bail in a criminal matter or offense arising out of a domestic violence situation**, until the order is dissolved by the appropriate court or until a condition is modified or discharged by the appropriate court.

6. **Refrain from behavior that results in the issuance of a final restraining order pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., or the provisions of a similar Federal or state statute.**

[5.] 7. [You are to reside] **Reside** at a residence approved by the assigned parole officer. Absence from the approved residence overnight without the approval of the assigned parole officer shall constitute a failure to reside at the approved residence.

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

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

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

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

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

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

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

[13. You are to refrain from behavior, which results in the issuance of a final restraining order pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., or the provisions of a similar Federal or state statute.]

[14.] 15. [You are to waive] **Waive** extradition to the State of New Jersey from any jurisdiction in which [you are] **the offender is** apprehended and detained for violation of [this] parole [status] and [you are] not to contest any effort by any jurisdiction to return [you] **the offender** to the State of New Jersey.

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

[16.] 17. [You are to refrain] **Refrain** from operating a motor vehicle without a valid driver's license.

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

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

(b)-(m) (No change.)

10A:71-6.11 Community supervision for life

(a) (No change.)

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

1.-3. (No change.)

4. Notify the assigned parole officer no later than the next business day upon the issuance by the appropriate court, pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., or the provisions of a similar Federal or state statute, of an order granting emergency relief, a temporary or final restraining order, or an order establishing conditions of release or bail in a criminal matter or offense arising out of a domestic violence situation[, and comply].

5. **Comply** with any condition established within [the respective] **an order granting emergency relief, a temporary or final restraining order, issued by the appropriate court, pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., or the provisions of a similar Federal or state statute, or an order establishing conditions of release or bail in a criminal matter or offense arising out of a domestic violence situation**, until the order is dissolved by the appropriate court or until a condition is modified or discharged by the appropriate court;

6. **Refrain from behavior that results in the issuance of a final restraining order pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., or the provisions of a similar Federal or state statute;**

Recodify existing 5.-17. as 7.-19. (No change in text.)

[18. Refrain from behavior which results in the issuance of a final restraining order pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., or the provisions of a similar Federal or state statute;]

Recodify existing 19.-22. as 20.-23. (No change in text.)

(c)-(n) (No change.)

10A:71-6.12 Parole supervision for life

(a)-(c) (No change.)

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

1.- 3. (No change.)

4. Notify the assigned parole officer no later than the next business day upon the issuance by the appropriate court, pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., or the provisions of a similar Federal or state statute, of an order granting emergency relief, a temporary or final restraining order, or an order establishing conditions of release or bail in a criminal matter or offense arising out of a domestic violence situation[, and comply];

5. **Comply** with any condition established within [the respective] **an order granting emergency relief, a temporary or final restraining order, issued by the appropriate court, pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., or the provisions of**

a similar Federal or state statute, or an order establishing conditions of release or bail in a criminal matter or offense arising out of a domestic violence situation, until the order is dissolved by the appropriate court or until a condition is modified or discharged by the appropriate court;

6. Refrain from behavior that results in the issuance of a final restraining order pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., or the provisions of a similar Federal or state statute;

Recodify existing 5.–17. as 7.–19. (No change in text.)

[18. Refrain from behavior which results in the issuance of a final restraining order pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., or the provisions of a similar Federal or state statute;]

Recodify existing 19.–25. as **20.–26.** (No change in text.)

(e)–(v) (No change.)

SUBCHAPTER 7. REVOCATION OF PAROLE

10A:71-7.5 Preliminary hearing; scheduling

(a)–(b) (No change.)

(c) If the parolee requests a postponement of the preliminary hearing, such postponement shall be granted by the hearing officer **for good cause**. Such request shall be made in writing[,] and the hearing officer shall record such request **and the determination of the hearing officer** in the parolee's case record.

(d)–(e) (No change.)

10A:71-7.13 Revocation hearing; scheduling

(a)–(b) (No change.)

(c) If the parolee requests a postponement of the revocation hearing and the parolee is currently in custody, such postponement shall be granted by the hearing officer **for good cause**. Such request shall be made in writing[,] and the hearing officer shall record such request **and the determination of the hearing officer** in the parolee's case record.

(d)–(e) (No change.)

10A:71-7.17 Board panel action; schedule of future parole eligibility dates upon revocation of parole for inmates who have violated parole prior to October 17, 1994

(a) (No change.)

(b) Except as provided [herein] **in this section**, upon revocation of parole, an adult inmate shall serve 12 months, a young adult inmate shall serve nine months, and a juvenile inmate shall serve six months, if the inmate has committed one of the following violations of parole:

1. Failure to report to the parole officer, [N.J.A.C. 10A:71-6.4(a)2,] provided that such parolee is declared by the District Parole Supervisor or designated representative of the Commission, as appropriate, to be missing from parole supervision.

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

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

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

5. (No change.)

(c)–(t) (No change.)

10A:71-7.17A Board panel action; schedule of future parole eligibility dates upon revocation of parole for inmates who violated parole on or after October 17, 1994, and prior to December 4, 1995

(a) This section applies to inmates who violated parole on or after October 17, 1994, and prior to December 4, 1995. After consideration of the hearing officer's hearing summary and opinion and any written exceptions thereto, a two-member Board panel shall determine whether to revoke parole pursuant to N.J.A.C. 10A:71-7.12. The Board panel members shall not receive or consider any ex parte communication. The parolee's case shall be decided on the basis of the established record.

1. (No change.)

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] **failing to obey all laws and ordinances, or owning or possessing any firearm, as defined in N.J.S.A. 2C:39-1f, for any purpose**, the two member Board panel shall certify parole release by:

i.–iii. (No change.)

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] **by failing to obey all laws and ordinances, or owning or possessing any firearm, as defined in N.J.S.A. 2C:39-1f, for any purpose**, 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] **by owning or possessing any firearm, as defined in N.J.S.A. 2C:39-1f, for any purpose**.

(c) Except as provided in this section, upon revocation of parole, a juvenile inmate shall serve six months, if the inmate has committed one of the following violations of parole:

1. Failure to report to the parole officer, [N.J.A.C. 10A:71-6.4(a)2,] provided that such parolee is declared by the designated representative of the Commission to be missing from parole supervision;

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

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

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

5. (No change.)

(d) (No change.)

(e) Except as provided [herein] **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 **parole by failing to obey all laws and ordinances**, by non-criminal conduct[, parole condition N.J.A.C. 10A:71-6.4(a)1].

(f)–(t) (No change.)

10A:71-7.17B Board panel action; schedule of future parole eligibility dates upon revocation of parole for inmates who violated parole on or after December 4, 1995

(a) This section applies to inmates who violated parole on or after December 4, 1995. After consideration of the hearing officer's hearing summary and opinion and any written exceptions thereto, a two-member Board panel shall determine whether to revoke parole pursuant to N.J.A.C. 10A:71-7.12. The Board panel members shall not receive or consider any ex parte communication. The parolee's case shall be decided on the basis of the established record.

1. (No change.)

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] **failing to obey all laws and ordinances, or owning or possessing any firearm, as defined in N.J.S.A. 2C:39-1f, for any purpose**, the two-member Board panel may certify parole release by:

i.–iii. (No change.)

3. Except as provided in this section, if parole is revoked by the two-member Board panel and parole release is not certified pursuant to (a)2 above, an adult inmate shall serve 12 months, a young adult inmate shall serve nine months, and a juvenile inmate shall serve six months if the inmate has violated one of the following conditions of parole:

i. Failure to report to the [parole officer, N.J.A.C. 10A:71-6.4(a)2,] **District Parole Supervisor or his or her designated representative** 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 **assigned** parole officer [immediately] **no later than the next business day** upon the issuance **by the appropriate court,**

pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., or the provisions of a similar Federal or state statute, of an order granting emergency relief, a temporary or final restraining order, or an order establishing conditions of release or bail in a criminal matter or offense arising out of a domestic violence situation[.];

iii. Failure to comply with any condition established within [the respective] an order **granting emergency relief, a temporary or final restraining order, issued by the appropriate court, pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., or the provisions of a similar Federal or state statute, or an order establishing conditions of release or bail in a criminal matter or offense arising out of a domestic violence situation**, 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];

iv. **Failure to refrain from behavior, which results in the issuance of a final restraining order pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., or the provisions of a similar Federal or state statute;**

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

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

[v.] vii. Failure to refrain from the **purchase, use, possession [or], distribution, or administration of [a] any narcotic drug, controlled dangerous substance, or controlled substance analog [or] as defined in N.J.S.A. 2C:35-2; imitation controlled dangerous substance or imitation controlled substance analog** as defined in [N.J.S.A. 2C:35-2 and] N.J.S.A. 2C:35-11[, N.J.A.C. 10A:71-6.4(a)8]; **or any paraphernalia as defined in N.J.S.A. 2C:36-1 related to such substances, except as prescribed by a physician; or**

[vi.] viii. (No change in text.)

(b) (No change.)

(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 **parole by failing to obey all laws and ordinances**, 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)-(r) (No change.)

SUBCHAPTER 8. CERTIFICATE OF GOOD CONDUCT

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] **supervised by the Board or is presently supervised by the Board.**

2. If the applicant is presently [on parole] **supervised by the Board**, at least one year must have expired since [release to parole] **commencement of supervision by the Board.**

3. **The applicant has not been convicted of a new crime within five years from the date of application.**

4. **The applicant has no pending charges or outstanding warrants.**

Recodify existing 3.-4. as 5.-6. (No change in text.)

10A:71-8.3 Procedure

(a)-(c) (No change.)

[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:71-8.5 Notification

(a) The Board shall [notify] **provide written notice to** the applicant of its decision within 30 days of the date [the application was considered] **of the decision.**

(b) **The original copy of the Certificate of Good Conduct, if granted, shall be maintained by the Board.**

[(b)] (c) (No change in text.)

(d) **A copy of the Certificate of Good Conduct, if granted, shall be provided to the applicant.**

(e) **The Certificate of Good Conduct provided to the applicant shall include a statement that the document is a copy and that a licensing authority should confirm with the Board that the certificate remains valid.**

(f) **If the Board should revoke a Certificate of Good Conduct pursuant to N.J.A.C. 10A:71-8.6, the Board shall provide written notice to the person who is the subject of the certificate, the Secretary of State, and the licensing authority within 15 days of the date of decision.**

10A:71-8.6 Revocation of Certificate of Good Conduct

(a) The Board may revoke a Certificate of Good Conduct for good cause.

(b) **A person who is the subject of the Certificate of Good Conduct shall be provided written notice prior to the Board rendering a decision to revoke the certificate. The person who is the subject of the certificate may provide a written statement for consideration by the Board as to why the certificate should not be revoked. The written statement must be received by the Board within 21 days of the person who is the subject of a certificate receiving the Board's notice. If a written statement is not received within the specified time period, the Board may proceed to consider the matter.**

(c) **Upon notice of the decision by the Board to revoke a Certificate of Good Conduct, the person who is the subject of the certificate shall surrender the certificate to the Board.**

[10A:71-8.7 Board action

The Board shall grant a revoke of Certificate of Good Conduct by majority vote of its members.]

10A:71-8.7 Board action

A decision by the Board to grant or revoke a certificate shall be rendered pursuant to N.J.A.C. 10A:71-1.2(h) and (i).

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

10A:71-9.6 Notification

(a)-(c) (No change.)

(d) The original copy of the certificate, if granted, shall be [filed with the Secretary of State] **maintained by the Board.**

(e) **A copy of the certificate, if granted, shall be filed with the Secretary of State.**

[(e)] (f) (No change in text.)

[(f)] (g) The certificate document provided to the applicant shall include a statement that the document is a copy and that a certifying authority, licensing authority, or public employer should confirm with the [Secretary of State] **Board** that the certificate remains valid.

[(g)] (h) (No change in text.)

CHAPTER 72 DIVISION OF PAROLE

SUBCHAPTER 2. COMMUNITY PLAN AND SUPERVISION

10A:72-2.5 Residing with a minor child

(a) In the case of an offender sentenced to a special sentence of community or parole supervision for life and the offense committed by the offender involved a minor child, the offender may not live at a residence in which a minor child is present unless approved by the District Parole Supervisor **or designee** or by the appropriate court.

(b) In the case of an offender in which the imposition of sentence is suspended and the offender is sentenced to a special sentence of parole supervision for life pursuant to N.J.S.A. 2C:43-6.4 and the offender is residing with a minor child on the date of sentence, the offender may be permitted to reside with the minor child, provided the minor child is not the victim of the offense, pending the assessment of the District Parole Supervisor **or designee** pursuant to (e) below.

(c) If an offender serving a special sentence of community or parole supervision for life requests **approval from the District Parole Supervisor or designee** to be permitted to reside with a minor child, the

parent or **legal** guardian of the minor child shall be required to provide to the District Parole Office a written statement requesting that the offender be permitted to reside with the minor child. The statement shall include an acknowledgment by the parent or **legal** guardian that the parent or **legal** guardian is familiar with the circumstances of the sexual offense committed by the offender. For the purpose of this subsection, the parent or **legal** guardian of the minor child shall be a person other than the offender.

(d)-(g) (No change.)

10A:72-2.6 Unsupervised contact with a minor child

(a) **In the case of an offender sentenced to a special sentence of community or parole supervision for life and the offense committed by the offender involved a minor child, the offender may not initiate, establish, or maintain unsupervised contact with a minor child unless approved by the District Parole Supervisor or designee or by the appropriate court, except as specified in N.J.A.C. 10A:71-6.11(d)1, 2, or 3, or 6.12(f)1, 2, or 3.**

(b) **If an offender serving a special sentence of community or parole supervision for life requests approval from the District Parole Supervisor or designee to initiate, establish, or maintain unsupervised contact with a minor child, the parent or legal guardian of the minor child shall be required to provide to the District Parole Office a written statement requesting that the offender be permitted to initiate, establish, or maintain unsupervised contact with the minor child. The statement shall include an acknowledgment by the parent or legal guardian that the parent or legal guardian is familiar with the circumstances of the sexual offense committed by the offender. For the purpose of this subsection, the parent or legal guardian of the minor child shall be a person other than the offender.**

(c) **An offender requesting to initiate, establish, or maintain unsupervised contact with a minor child shall be required to submit for consideration by the District Parole Supervisor or designee the written assessment from a sex offender treatment provider designated by the District Parole Supervisor or designee who has assessed the offender and the request by the offender to initiate, establish, or maintain unsupervised contact with a minor child. The assessment shall include, but not be limited to:**

1. **A statement as to the assessed level of risk posed by the offender to the minor child;**

2. **A statement as to whether or not the offender initiating, establishing, or maintaining unsupervised contact with the minor child is conducive to the offender's relapse prevention plan;**

3. **A statement as to the appropriateness of informing the minor child of the circumstances of the sexual offense committed by the offender; and**

4. **The recommendation of the evaluator as to the appropriateness of the offender initiating, establishing, or maintaining unsupervised contact with the minor child.**

(d) **Upon receipt of the statement required pursuant to (b) above and the assessment required pursuant to (c) above, the District Parole Supervisor or designee shall evaluate the matter and determine whether the offender shall be permitted to initiate, establish, or maintain unsupervised contact with the minor child.**

(e) **Upon a decision being rendered, the District Parole Supervisor or designee shall notify the offender in writing of the decision and the basis for the decision. The decision and the basis for the decision shall also be recorded in the chronological supervision report.**

SUBCHAPTER 3. POLYGRAPH EXAMINATION OF SEX OFFENDERS

10A:72-3.6 Polygraph examination disclosure form

(a) (No change.)

(b) The disclosure form shall include, but not be limited to:

1.-4. (No change.)

5. **That the valid exercise of the right to remain silent does not constitute failure to fully participate and/or cooperate with the examination; [and]**

6. **That the results of the pre-examination interview and post-examination interview and the machine-generated results of the**

polygraph examination may be used for therapeutic treatment purposes;

7. **That the machine-generated results of the polygraph examination shall not be relied on or cited as evidence to support the filing of criminal charges or to justify the imposition or modification of sanctions, such as special conditions;**

8. **That the results of the pre-examination interview and post-examination interview may be relied on or cited as evidence to support the filing of criminal charges or to justify the imposition or modification of sanctions, such as special conditions; and**

[6.] 9. **That the machine-generated results of the polygraph examination shall not be used as evidence in court to prove that a violation of the special sentence of community or parole supervision for life or condition of discharge has occurred.**

10A:72-3.9 Review of polygraph examination report

(a)-(b) (No change.)

(c) **The results of the pre-examination interview and post-examination interview and the machine-generated results of the polygraph examination may be used for therapeutic treatment purposes.**

(d) **The machine-generated results of the polygraph examination shall not be relied on or cited as evidence to support the filing of criminal charges or to justify the imposition or modification of sanctions, such as special conditions.**

(e) **The results of the pre-examination interview and post-examination interview may be relied on or cited as evidence to support the filing of criminal charges or to justify the imposition or modification of sanctions, such as special conditions.**

[(c)] (f) **Pursuant to N.J.S.A. 30:4-123.88, the machine-generated results of the polygraph examination shall not be used as evidence in court to prove that a violation of the special sentence of community or parole supervision for life or condition of discharge has occurred.**

SUBCHAPTER 10. CURFEW [AND], ELECTRONIC MONITORING, AND GLOBAL POSITIONING SYSTEM (GPS) MONITORING

10A:72-10.1 Criteria

(a) This subchapter applies to the following:

1. (No change.)

2. **The imposition of a special condition of curfew for those offenders serving a mandatory period of parole supervision pursuant to N.J.S.A. 2C:43-[7.2(c)]7.2.c; [and]**

3. **The imposition of a special condition of electronic monitoring for those offenders serving a special sentence of community or parole supervision for life or a mandatory period of parole supervision pursuant to N.J.S.A. 2C:43-[7.2(c)]7.2.c; and**

4. **The imposition of a special condition of Global Positioning System (GPS) monitoring for those offenders serving a special sentence of community or parole supervision for life or a mandatory period of parole supervision pursuant to N.J.S.A. 2C:43-7.2.c.**

(b) **The District Parole Supervisor, Assistant District Parole Supervisor, or designee of the District Parole Supervisor, may effectuate the general condition of curfew or impose a special condition that the offender abide by an assigned curfew, [or] participate in electronic monitoring, or GPS monitoring if:**

1. **There is a specific and articulable reason and a clear purpose for the imposition of the curfew, [or] electronic monitoring, or GPS monitoring; and**

2. **The imposition of the curfew, [or] electronic monitoring, or GPS monitoring will act as an aid to the offender's re-entry efforts; or [3. The imposition of the curfew or electronic monitoring] is deemed necessary to protect the public from recidivism by the offender.**

10A:72-10.2 Specifications

(a) **The curfew, [or] electronic monitoring, or GPS monitoring period established pursuant to N.J.A.C. 10A:72-10.1(b) shall comply with the following specifications:**

1. (No change.)

2. The curfew, [or] electronic monitoring, **or GPS monitoring** period shall specify a beginning and ending date for the curfew, [or] electronic monitoring, **or GPS monitoring period**;

3.–4. (No change.)

5. The curfew, [or] electronic monitoring, **or GPS monitoring** period shall be imposed for a maximum of 180 days;

6. A District Parole Supervisor, Assistant District Parole Supervisor, or designee of the District Parole Supervisor, shall review the curfew, [or] electronic monitoring, **or GPS monitoring** period no less than 90 days after imposition to determine if it remains warranted; and

7. Any extension of the curfew, [or] electronic monitoring, **or GPS monitoring** period beyond 180 days shall require an additional review by the District Parole Supervisor, Assistant District Parole Supervisor, or designee of the District Parole Supervisor, and shall conform with the procedures in N.J.A.C. 10A:72-10.3.

10A:72-10.3 Procedure

(a) The offender shall be served in person with written notice of the imposition of the curfew, [or] electronic monitoring, **or GPS monitoring** condition. The written notice shall include the basis for the imposition of the condition.

(b) The offender shall be provided with a written informational statement that details the procedure for the imposition of the curfew, [or] electronic monitoring, **or GPS monitoring** condition.

(c) The offender shall indicate in writing whether he or she contests the allegations, the conclusions to be drawn from the allegations, or the justification supporting the imposition of the curfew, [or] electronic monitoring, **or GPS monitoring** condition.

(d) If the offender does not deny the allegations, contest the conclusions to be drawn from the allegations, or the rationale supporting the curfew, [or] electronic monitoring, **or GPS monitoring** condition, the offender shall be advised that the curfew [or], electronic monitoring, **or GPS monitoring** condition shall be effectuated immediately.

(e) If the offender contests the allegations, the conclusions to be drawn from the allegations, or the rationale supporting the curfew, [or] electronic monitoring, **or GPS monitoring** condition and exigent circumstances do not exist as to require the immediate effectuation of the curfew, [or] electronic monitoring, **or GPS monitoring** condition, the following procedures shall apply:

1. The offender shall be advised that he or she will have five business days to submit a written statement or documentation to the District Parole Office to be considered before the curfew, [or] electronic monitoring, **or GPS monitoring** condition becomes effective;

2. The offender shall be advised that if the offender fails to submit a written statement or documentation within five business days, the curfew, [or] electronic monitoring, **or GPS monitoring** condition shall become effective immediately upon the expiration of the five business days;

3. If the offender submits a written statement or documentation within five business days, the curfew, [or] electronic monitoring, **or GPS monitoring** condition shall not be effectuated until such time as a board panel authorizes the effectuation of the curfew, [or] electronic monitoring, **or GPS monitoring** condition;

4. The District Parole Office shall forward a copy of the written notice of the imposition of the curfew, [or] electronic monitoring, **or GPS monitoring** condition to a board panel. If the offender contests the imposition of the curfew, [or] electronic monitoring, **or GPS monitoring** condition and has submitted a written statement or documentation to the District Parole Office, a copy of the written statement and documentation shall be forwarded by the District Parole Office to the board panel for consideration;

5. An offender shall not be precluded from submitting a written statement or documentation to the District Parole Office after the expiration of the five business days time period. However, the failure to comply with the five business days time period shall result in the immediate effectuation of the curfew, [or] electronic monitoring, **or GPS monitoring** condition; and

6. (No change.)

(f) If the offender contests the allegations, the conclusions to be drawn from the allegations or the rationale supporting the curfew, [of] electronic monitoring, **or GPS monitoring** condition and the District Parole Office

believes that exigent circumstances do exist as to require the immediate effectuation of the curfew, [or] electronic monitoring, **or GPS monitoring** condition, the following procedures shall apply:

1. The District Parole Supervisor shall review the offender's case within 24 hours of the determination to impose the curfew, [or] electronic monitoring, **or GPS monitoring** condition to determine whether exigent circumstances do exist as to require immediate effectuation of the curfew, [or] electronic monitoring, **or GPS monitoring** condition and shall verbally advise the offender and the assigned parole officer of his or her determination. If the District Parole Supervisor shall determine that exigent circumstances exist, the District Parole Supervisor shall also provide written notice to the offender as to the basis for the determination;

2. If the District Parole Supervisor determines that exigent circumstances do exist, the curfew, [or] electronic monitoring, **or GPS monitoring** condition shall be effectuated immediately;

3. (No change.)

4. The District Parole Office shall forward a copy of the written notice of the imposition of the curfew, [or] electronic monitoring, **or GPS monitoring** condition and, if exigent circumstances were found to exist by the District Parole Supervisor, a copy of the written notice of the basis for the determination of the existence of exigent circumstances to a board panel. If the offender contests the imposition of the curfew, [or] electronic monitoring, **or GPS monitoring** condition and has submitted a written statement or documentation to the District Parole Office, a copy of the written statement or documentation shall be forwarded by the District Parole Office to the board panel for consideration;

5.–6. (No change.)

10A:72-10.4 Board panel review

(a) Upon receipt of the written notice of the imposition of the curfew, [or] electronic monitoring, **or GPS monitoring** condition, the basis for the imposition of the curfew, [or] electronic monitoring, **or GPS monitoring** condition, the written statement of the offender, if submitted, and any attendant documents, a board panel shall review the offender's case.

(b) If the board panel determines a hearing shall be conducted prior to the effectuation of the curfew, [or] electronic monitoring, **or GPS monitoring** condition based on a finding that an issue of fact requires resolution, the matter shall be referred for the scheduling of a hearing before a designated hearing officer.

(c) (No change.)

(d) If the board panel does not concur with the determination that exigent circumstances exist and determines a hearing shall be conducted based on a finding that an issue of fact requires resolution, the matter shall be referred for the scheduling of a hearing before a designated hearing officer. The offender and District Parole Office shall be advised that the curfew, [or] electronic monitoring, **or GPS monitoring** condition shall be held in abeyance pending the conducting of a hearing.

(e) If the board panel determines that a hearing is not required, the board panel shall determine whether to affirm, modify, or vacate the imposition of the curfew, [or] electronic monitoring, **or GPS monitoring** condition.

(f) (No change.)

10A:72-10.7 Hearing; failure to appear

If the offender fails to attend the hearing on the original scheduled date or upon a postponement being granted fails to attend the rescheduled hearing and the offender has failed to provide good cause for his or her non-appearance, the curfew, [or] electronic monitoring, **or GPS monitoring** condition shall be deemed not to be contested by the offender and the matter shall be presented to the board panel based on the existing record for a final determination.