

STATE PAROLE BOARD

Proposed New Rules: N.J.A.C. 10A:71-9

Certificate Suspending Certain Employment, Occupational Disabilities or Forfeitures

Authorized By: New Jersey State Parole Board, Peter J. Barnes, Jr., Chairman.

Authority: *N.J.S.A. 2A:168A-16*.

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

Submit comments by November 14, 2008 to:

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The agency proposal follows:

Summary

P.L. 2007, c. 327 (*N.J.S.A. 2A:168A-7* et seq.) was enacted on January 13, 2008 and became effective August 1, 2008. The legislation provides for the issuance of a certificate by a supervising authority that suspends certain disabilities, forfeitures or bars to employment or professional licensure or certification that apply to persons convicted of criminal offenses. "Supervising authority," as defined in the legislation, means the court in the case of a person who was subject to probation or who was not required to serve a period of supervision, or the State Parole Board in the case of a person who was under parole supervision.

A certificate issued pursuant to the legislation is intended to relieve disabilities, forfeitures or bars, except those established or required by Federal law, to: (1) public employment as defined in the legislation; (2) qualification for a license or certification to engage in the practice of a profession, occupation or business, except the practice of law; or (3) admission to an examination to qualify for such a license or certification, except for the bar examination, or an examination for a law enforcement, homeland security, or emergency management position.

The legislation defines a "qualified offender" and establishes certain eligibility criteria to be met by the offender and establishes criteria to be considered by the supervising authority when assessing whether a certificate should be issued in an offender's case. The criteria includes whether the issuance of the certificate will not pose a substantial risk to public safety and whether the issuance of the certificate will assist in the successful reintegration of the offender and is consistent with the public interest.

The legislation provides that a certificate issued shall be presumptive evidence of the offender's rehabilitation when considered in regard to public employment as defined in the legislation or in conjunction with any licensing or certification process to which the legislation applies. However, the certificate does not prevent any judicial, administrative, licensing or other body, board, authority or public official from relying on grounds other than the fact of the criminal conviction in exercising any discretionary authority.

The legislation also provides for notice to the prosecutor of the issuance of a certificate or the pendency of an application, or both, and provides for the revocation of the certificate under certain circumstances, which include, but are not limited to, the offender being indicted for a first or second degree crime or convicted of a crime.

The proposed new rules, which are based on the statutory provisions, provide for the implementation of the State Parole Board's responsibilities in the processing and assessing of applications for the issuance of a certificate. The proposed new rules address the State Parole Board's statutory authorization to issue a certificate, statutory definitions, statutory eligibility, the presumption of rehabilitation, application requirements, notification to the prosecutor, the revocation of a certificate, and voting by the State Parole Board.

The notice of proposal is not subject to the calendar requirements of *N.J.S.A. 52:14B-3(4)* and *N.J.A.C. 1:30-3.3(a)* because the State Parole Board has provided a 60-day comment period and, therefore, pursuant to *N.J.A.C. 1:30-3.3(a)5*, this notice is exempted from the rulemaking calendar requirement.

Social Impact

Persons convicted of criminal offenses have limitations on their employment opportunities due to certain statutory and regulatory policies. Such limitations can present impediments to the person's successful reentry and reintegration into the community. P.L. 2007, c. 327 (*N.J.S.A. 2A:168A-7* et seq.) and the proposed new rules, which are based on said legislation, provide for a measure of relief from said impediments through the issuance of a certificate, which would suspend certain disabilities, forfeitures or bars to public employment, licensing and certification. Providing appropriate opportunities for the successful reentry and reintegration of certain persons convicted of criminal offenses may assist in the reduction of recidivism and, thereby, promote public safety.

The staff of the State Parole Board will be impacted as staff will be required to insure the efficient processing of applications for consideration and insuring that appropriate notifications are provided. The State Parole Board will be required to review and assess eligible applications and render decisions regarding the granting or revoking the issuance of a certificate.

Economic Impact

The economic impact of the proposed new rules, which are based on statutory provisions cannot readily be identified. Certain persons convicted of a criminal offense who were not previously eligible for public employment, as defined by statute, licensing or certification may, by the issuance of a certificate, obtain public employment or obtain employment in a profession, occupation or business requiring licensing or certification. It is those persons who are able to obtain appropriate employment with the assistance of the certificate that will derive the main economic impact.

Any reduction in the rate of recidivism occurring as a result of certain offenders becoming employed and successfully reentering the community may impact on the cost of the criminal prosecution process and cost of confining offenders in the state and county correctional systems.

Federal Standards Statement

The proposed new rules do not pertain to any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. An explanation or analysis of the proposed new rules pursuant to Executive Order No. 27 (1994) is, therefore, not required.

Jobs Impact

The proposed new rules, which are based on statutory provisions, pertain to the issuance of a certificate that suspends certain disabilities, forfeitures or bars to employment or professional licensure or certification that apply to persons convicted of criminal offenses. It is not anticipated that the proposed new rules, if adopted, will result in the generation or loss of jobs.

Agriculture Industry Impact

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

Regulatory Flexibility Statement

The proposed 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 new rules pertain to the issuance of a certificate that suspends certain disabilities, forfeitures or bars to employment or professional licensure or certification that apply to persons convicted of criminal offenses. A regulatory flexibility analysis is, therefore, not required.

Smart Growth Impact

The proposed new rules will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The proposed new rules pertain to the issuance of a certificate that suspends certain disabilities, forfeitures or bars to employment or professional licensure or certification that apply to persons convicted of criminal offenses. The proposed new rules will, therefore, have no impact on housing units or the increase or decrease in the average cost of housing.

Smart Growth Development Impact

The proposed new rules pertain to the issuance of a certificate that suspends certain disabilities, forfeitures or bars to employment or professional licensure or certification that apply to persons convicted of criminal offenses. The proposed new rules will, therefore, have no impact on housing units, the increase or decrease in the availability of affordable housing or new construction under the State Development and Redevelopment Plan.

Full text of the proposed new rules follows:

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

10A:71-9.1 Authorization to issue certificate

(a) A certificate may be issued by the Board in the case of a person who was under parole supervision in accordance with the provisions of *N.J.S.A. 2A:168A-7*, which suspends certain disabilities, forfeitures or bars to employment or professional licensure or certification that apply to persons convicted of criminal offenses.

(b) A certificate issued by the Board pursuant to *N.J.S.A. 2A:168A-7* shall have the effect of relieving disabilities, forfeitures or bars, except those established or required by Federal law, to:

1. Public employment;
2. Qualification for a license or certification to engage in the practice of a profession, occupation or business, except the practice of law; or
3. Admission to an examination to qualify for such a license or certification, except for the bar examination, or an examination for a law enforcement, homeland security, or emergency management position.

(c) A certificate issued by the Board pursuant to *N.J.S.A. 2A:168A-7* may be limited to one or more enumerated disabilities, forfeitures or bars, or may relieve the subject of all disabilities, forfeitures or bars that may be affected by *N.J.S.A. 2A:168A-7*.

10A:71-9.2 Definitions

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

"Public employment" shall mean employment by a State, county, or municipal agency, but shall not include elected office, or employment in law enforcement, corrections, the judiciary, in a position related to homeland security or emergency management, or any position that has access to sensitive information that could threaten the public health, welfare, or safety.

"Qualified offender" refers to a person who has one criminal conviction or who has convictions for more than one crime charged in separate counts of one indictment or accusation. Multiple convictions charged in two indictments or two accusations, or one indictment and one accusation filed in the same court prior to entry of judgment under any of them, shall be deemed to be one conviction. Convictions of crimes entered more than 10 years prior to an application for a certificate under *N.J.S.A. 2A:168A-7* shall not be considered in determining whether a person has one criminal conviction.

10A:71-9.3 Eligibility

(a) A certificate may be issued by the Board pursuant to *N.J.S.A. 2A:168A-7* in regard to a qualified offender who is, or had previously been, under supervision by the Board if the Board determines pursuant to *N.J.S.A. 2A:168A-8(b)* that:

1. The applicant is convicted of a second, third or fourth degree offense and is eligible for relief as defined in (b) below;
2. The applicant has not been convicted of a crime since the conviction for which he or she is under supervision, has no pending criminal charge, and there is no information presented that such a charge is imminent;
3. Issuing the certificate will not pose a substantial risk to public safety; and
4. Issuing the certificate will assist in the successful reintegration of the offender and is consistent with the public interest.

(b) Pursuant to *N.J.S.A. 2A:168A-8(c)*, a qualified offender is eligible for relief under (a) above if the offender has not been convicted of:

1. A first degree crime;
2. An offense to which *N.J.S.A. 2C:43-7.2* applies;
3. A second degree offense defined in Chapters 13, 14, 15, 16, 24, 27, 30, 33 or 38 of Title 2C of the New Jersey Statutes;
4. A violation of *N.J.S.A. 2C:24-4a.* or *N.J.S.A. 2C:24-4b.(4)*;
5. A crime requiring registration pursuant to *N.J.S.A. 2C:7-2*;
6. A crime committed against a public entity or against a public officer;
7. A crime enumerated in *N.J.S.A. 43:1-3.1*, committed by a public employee, which involves or touches upon the employee's office, position or employment, such that the crime was related directly to the person's performance in, or circumstances flowing from, the specific public office or employment held by the person;
8. Any crime committed against a person 16 years of age or younger, or a disabled or handicapped person; or
9. A conspiracy or attempt to commit any of the crimes described in this subsection.

(c) The Board may issue a certificate in regard to a qualified offender, when three years have passed since the applicant has completed the parole supervision portion of his or her sentence and the Board determines pursuant to *N.J.S.A. 2A:168A-8(d)* that:

1. The applicant is eligible for relief as defined in (d) below;
2. Issuing the certificate does not pose a substantial risk to public safety; and

3. Issuing the certificate will assist in the successful reintegration of the offender and is consistent with the public interest.

(d) Pursuant to *N.J.S.A. 2A:168A-8(e)*, a qualified offender is eligible for relief under (c) above if he or she has remained without criminal involvement since his or her conviction, including that he or she has not subsequently been convicted of a crime, has no pending charges for any crime, and there is no information presented that such a charge is imminent; and is applying for relief from a conviction other than:

1. A first degree crime;
2. Any of the offenses to which *N.J.S.A. 2C:43-7.2* applies;
3. A violation of *N.J.S.A. 2C:24-4a.* or *N.J.S.A. 2C:24-4b.(4)*;
4. A crime requiring registration pursuant to *N.J.S.A. 2C:7-2*;
5. A crime enumerated in *N.J.S.A. 2C:43:1-3.1*, committed by a public employee, which involves or touches upon the employee's office, position or employment, such that the crime was related directly to the person's performance in, or circumstances flowing from, the specific public office or employment held by the person;
6. A crime committed against a person 16 years of age or younger, or a disabled or handicapped person; or
7. A conspiracy or attempt to commit any offense described in this subsection.

(e) The certificate issued pursuant to (a) or (c) above may suspend disabilities, forfeitures and bars generally within the limits of *N.J.S.A. 2A:168A-7* et seq., or only certain disabilities, forfeitures and bars specifically named in the certificate document issued by the Board.

10A:71-9.4 Presumption of rehabilitation

Pursuant to *N.J.S.A. 2A:168A-9*, a certificate issued pursuant to *N.J.S.A. 2A:168A-7* shall be presumptive evidence of the subject's rehabilitation when considered in regard to public employment as defined in *N.J.S.A. 2A:168A-7* and *N.J.A.C. 10A:71-9.2*, or in conjunction with any licensing, or certification process to which this act applies, which in any particular case may or may not be overcome by other evidence or information. A certificate granted under *N.J.S.A. 2A:168A-7* shall not prevent any judicial, administrative, licensing or other body, board, authority or public official from relying on grounds other than the fact of the criminal conviction in exercising any discretionary authority, if any, to suspend, revoke, refuse to issue or refuse to renew any license, permit or other authority or privilege or to determine eligibility or suitability for employment.

10A:71-9.5 Procedure

- (a) The applicant shall apply to the Board for a certificate on forms prescribed and furnished by the Board.
- (b) Upon receipt of the application, the Board may initiate a confidential investigation, which shall contain all pertinent information, with particular reference to the need the applicant has for the use he or she expects to make of the certificate.
- (c) The applicant shall be required to furnish all documentary evidence required by the Board.

10A:71-9.6 Notification

- (a) The Board shall provide written notice to the appropriate prosecutor of the pendency of an application submitted pursuant to this subchapter within 30 days of receipt of the application.

- (b) The Board shall provide written notice to the appropriate prosecutor of the decision rendered by the Board on an application submitted pursuant to this subchapter within 30 days of the date of the decision.
- (c) The Board shall provide written notice to the applicant of its decision within 30 days of the date of the decision.
- (d) The original copy of the certificate, if granted, shall be filed with the Secretary of State.
- (e) A copy of the certificate, if granted, shall be provided to the applicant.
- (f) The certificate document provided to the applicant shall include a statement that the document is a copy and that a certifying authority, licensing authority or public employer should confirm with the Secretary of State that the certificate remains valid.
- (g) If the Board should revoke a certificate pursuant to N.J.A.C. 10A:71-9.7, the Board shall provide written notice to the person who is the subject of the certificate, the appropriate prosecutor, the Secretary of State, the appropriate certifying authority, licensing authority or public employer within 15 days of the date of decision.

10A:71-9.7 Revocation of certificate

- (a) In accordance with *N.J.S.A. 2A:168A-11*, a certificate granted pursuant to *N.J.S.A. 2A:168A-7* shall no longer be valid if the person who is the subject of the certificate is indicted for a first or second degree crime or convicted of a crime.
- (b) Upon presentation of satisfactory proof that the criminal charges or indictment have been dismissed, or of an acquittal after trial, a certificate revoked under the circumstances described in (a) above may be reinstated by the Board.
- (c) A certificate may be revoked at any time upon application of the prosecutor or on the Board's own initiative when information is received that circumstances have materially changed, such that the relief would not be authorized under *N.J.S.A. 2A:168A-7* et seq., or is no longer in the public interest.
- (d) A person who is the subject of a certificate shall be provided written notice prior to the Board rendering a decision to revoke the certificate. The person who is the subject of the certificate may provide a written statement for consideration by the Board as to why the certificate should not be revoked. The written statement must be received by the Board within 21 days of the person who is the subject of a certificate receiving the Board's notice. If a written statement is not received within the specified time period, the Board may proceed to consider the matter.
- (e) The notice provided pursuant to (d) above shall not be required if the basis for revocation of the certificate is an indictment for a first or second degree crime or the conviction for the commission of a crime.
- (f) Upon notice of the decision by the Board to revoke a certificate, the person who is the subject of the certificate shall surrender the certificate to the Board.

10A:71-9.8 Board action

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