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## **STATE PAROLE BOARD**

### **Parole Board Rules**

**Proposed Amendments: N.J.A.C. 10A:71-3.9, 3.13, 3.22, 3.23, 3.37, 3.45, 4.1, 4.2, 4.3, 4.4, 6.4, 6.10, 6.11, 6.12, and 7.14**

**Proposed Repeal: N.J.A.C. 10A:71-4.1**

**Proposed New Rule: N.J.A.C. 10A:71-6.13**

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

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

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

Proposal Number: PRN 2007-354.

Submit comments by February 1, 2008 to:

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The agency proposal follows:

#### **Summary**

N.J.S.A. 30:4-123.88 became effective August 11, 2005. The statute provides that the State Parole Board, on at least an annual basis, may administer to all offenders, serving a special sentence of community supervision for life or parole supervision for life imposed pursuant to N.J.S.A. 2C:43-6.4, a polygraph examination in order to obtain information necessary for risk management and treatment and to reduce the offender's denial mechanisms; that the polygraph examination be conducted by a polygrapher trained specifically in the use of the polygraph for the monitoring of sex offenders; that the polygraph examination shall be paid for by the offender; and that the results of the polygraph examination shall not be used as evidence in court to prove a violation of community or parole supervision for life or that a condition of discharge pursuant to N.J.S.A. 30:4-27.36 has occurred.

Based on the enactment of N.J.S.A. 30:4-123.88 and a review of the New Jersey Administrative Code, the State Parole Board proposes various amendments to the present rules and a new rule (N.J.A.C. 10A:71-6.13). Several amendments merely correct references to New Jersey Administrative Code and statutory citations or clarify existing rules. The amendments and new rule are as follows:

1. The proposed amendments to N.J.A.C. 10A:71-3.9(c), 3.13(i), 3.23(e)3 (to be recodified as 3.23(f)3), 3.37(a), 3.45(a), and 4.3(a) (to be recodified as 4.2(a)) correct references to Administrative Code citations.

2. The proposed amendment to N.J.A.C. 10A:71-3.22(c) clarifies that designated Board staff and not the Juvenile Panel is responsible for the distribution of the notice of a juvenile inmate's established tentative parole release date.

3. Proposed new N.J.A.C. 10A:71-3.23(c) states that the Juvenile Panel shall establish the tentative parole release date in the cases of juvenile inmates serving a term of incarceration for the commission of an offense, which if committed by an adult would constitute a crime of the

first or second degree. The new subsection also sets forth that in all other cases, tentative parole release dates may be established by a hearing officer, a juvenile Board panel member or the juvenile Board panel.

4. The proposed amendment to N.J.A.C. 10A:71-3.23(e)3 (to be recodified as 3.23(f)3) deletes a reference to the reconsideration process provided for in N.J.A.C. 10A:71-4.1. It is being proposed that N.J.A.C. 10A:71-4.1 be repealed.

5. It is proposed that N.J.A.C. 10A:71-4.1 (Requests by inmates for reconsideration) be repealed. It is believed that the criteria for a request for reconsideration are essentially included in the administrative appeal process; that the elimination of the request for reconsideration process would permit the Board to utilize limited staff resources in the processing of administrative appeals; and that the elimination of the request for reconsideration process would not impede an offender's right to seek review of a decision to deny parole.

6. The proposed amendment to N.J.A.C. 10A:71-4.2(h) (to be recodified as 4.1(h)) deletes reference to a court rule, which had been repealed and inserts reference to the pro bono assignment program, which exists in each judicial vicinage.

7. The proposed amendments to N.J.A.C. 10A:71-4.2(i) (to be recodified as 4.1(i)) and 4.3(d) and (e) (to be recodified as 4.2(d) and (e)) replace the term "Chairman" with the term "Chairperson."

8. Proposed new N.J.A.C. 10A:71-4.1(j) provides that a decision to deny parole rendered by the Board shall be appealable to the Board if one of the criteria in subsection (a) of this section is met. The Board permits an administrative appeal to the Board of a decision to deny parole rendered by the Board. A specific Administrative Code provision, however, did not provide for such an appeal.

9. The proposed amendment to N.J.A.C. 10A:71-4.3(a), (d) and (e) (to be recodified as 4.2(a), (d) and (e)) adds a clarifying phrase after the referenced Administrative Code citation.

10. The proposed amendment to N.J.A.C. 10A:71-4.3(b) (to be recodified as 4.2(b)) modifies the time period within which an appeal is to be considered from 45 to 90 days. The 45-day time period was established in 1980 upon the original adoption of the Administrative Code. The inmate population has significantly increased since 1980 and the number of case decisions rendered by Board panels also has increased. The volume of administrative appeals precludes the administrative processing and assessment of cases within the specified time period. The Board believes that the time period should be modified to reflect the current number of administrative appeals submitted for consideration and the time required to process a case for the Board's consideration.

11. The proposed amendments to N.J.A.C. 10A:71-4.4(a) (to be recodified as 4.3(a)) clarify that a Board member, Board Panel or the Board may reconsider a decision to grant, deny or revoke parole upon determining that good cause exists.

12. Proposed new N.J.A.C. 10A:71-6.4(a)17 would establish as a general condition of parole that the parolee submit to a polygraph examination at least once a year at the direction of the District Parole Supervisor if the parolee is serving a sentence for an offense enumerated in N.J.S.A. 2C:43-6.4 (Community/Parole Supervision for Life). The general condition is based on N.J.S.A. 30:4-123.88.

13. The proposed amendments to N.J.A.C. 10A:71-6.4(a)16, 6.11(b)20 and 6.12(d)21 delete the phrase "the assigned" and inserts the term "a" before the phrase "parole officer." Based on the proposed amendment, a search without a warrant of the offender's person, place of residence, vehicle or other real or personal property may be conducted when a parole officer, not merely the assigned parole officer, has a reasonable articulable basis to believe the search will produce contraband or evidence that a condition of supervision has been violated, is being violated or is about to be violated. Such a modification was suggested through public comment at the time these paragraphs were originally adopted by the Board. Though the Board concurred with said suggestion, the modification could not be effectuated at the time of adoption as the modification was deemed to constitute a substantive change requiring reproposal.

14. It is proposed that N.J.A.C. 10A:71-6.4(l) be deleted. This subsection refers to the Department of Corrections' alternative sanction programs and the stabilization and reintegration program. The alternate

sanction programs were transferred to the Board upon the Bureau of Parole being constituted as the Division of Parole in the Board. Further, there is no longer an aftercare component of the Department's stabilization and reintegration program. If the staff of the stabilization and reintegration program should recommend a condition of supervision the Board members certifying parole release may, pursuant to N.J.A.C. 10A:71-6.4(e), impose the same as a special condition of parole. In view of the aforementioned, it is believed that this subsection is no longer necessary.

15. The proposed amendments to N.J.A.C. 10A:71-6.10(a) correct the captions and statutory citations for the compacts relating to the transfer of parole supervision to an out-of-State jurisdiction.

16. Proposed new N.J.A.C. 10A:71-6.11(b)21 establishes, as a general condition of community supervision for life, the requirement that the offender submit to a polygraph examination at least once a year as directed by the District Parole Supervisor. The general condition is based on N.J.S.A. 30:4-123.88.

17. Proposed new N.J.A.C. 10A:71-6.12(d)22 and 23 provide for the following:

(a) The establishment of a general condition of parole supervision for life that the offender is to make payments to the Division of Parole regarding the specified monetary obligations imposed by a sentencing court. Such a condition is a general condition of standard parole supervision, but it has not previously been identified as a parole supervision for life condition of supervision.

(b) The establishment of a general condition of parole supervision for life that the offender submit to a polygraph examination at least once a year as directed by the District Parole Supervisor. The general condition is based on N.J.S.A. 30:4-123.88.

18. The proposed amendment to N.J.A.C. 10A:71-6.12(l) clarifies that when the imposition of sentence is suspended and the offender immediately commences a special sentence of parole supervision for life, any condition imposed by the sentencing court shall be deemed a special condition of parole supervision for life. The incorporation of the court imposed condition(s) as a special condition(s) of parole supervision for life would permit the Division of Parole to initiate the administrative parole revocation process if the offender should violate the condition(s).

19. Proposed new N.J.A.C. 10A:71-6.13 codifies N.J.S.A. 30:4-123.88.

20. The proposed amendment to N.J.A.C. 10A:71-7.14(a) clarifies that designated Board staff, not the hearing officer, is to provide notice of the time, date and place of the revocation hearing. The amendment reflects the administrative practice of the agency.

21. The proposed amendment to N.J.A.C. 10A:71-7.14(c)2 deletes reference to a court rule, which had been repealed and inserts reference to the pro bono assignment program, which presently exists in each judicial vicinage.

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

#### Social Impact

The request for reconsideration process in which an inmate may formally request a Board panel to reconsider its decision is being eliminated. An inmate in lieu of electing to request reconsideration of a Board panel decision and then appeal the decision to the Board will now be appealing a decision to deny parole directly to the Board. Board staff will, therefore, in some cases not be required to process the case for reconsideration by the appropriate Board panel and subsequently process the same case for consideration by the Board.

Offenders serving a sentence for an offense enumerated in N.J.S.A. 2C:43-6.4 who are on parole status, offenders on community supervision for life status and offenders on parole supervision for life status will be affected in that they will be subject to a general condition that they submit to a polygraph examination. In addition, offenders on parole supervision for life status will be subject to a general condition requiring that they make payments of monetary obligation imposed by the sentencing court to the Division of Parole and in certain cases subject to a

special condition of supervision requiring the offender to comply with any condition(s) established by the sentencing court.

The Division of Parole of the State Parole Board will be required to insure that offenders comply with the proposed conditions of supervision and assess whether a violation should result in the implementation of the parole revocation hearing process and/or referral to the appropriate Prosecutor's Office. An offender who fails to comply with the conditions of community or parole supervision for life is subject to prosecution for the commission of a fourth degree offense. An offender, upon revocation by the State Parole Board of their parole status or parole supervision for life status, will be required to serve a period of confinement in the custody of the Department of Corrections.

#### Economic Impact

The new rule, which is based on N.J.S.A. 30:4-123.88, requires that the offender shall pay for the conducting of a polygraph examination. Accordingly, those offenders who are required to submit to a polygraph examination will incur the expense of said examination.

Proposed amendments establish additional conditions of supervision. If an offender is found to be in violation of a condition of supervision and if it is found that the violation is of a serious or persistent nature the offender's supervision status may be revoked. Upon revocation of an offender's supervision status, the offender will be required to serve a period of confinement in the custody of the Department of Corrections. In such cases, the Department of Corrections will incur the expense of housing the offender until release of the offender is authorized.

#### Federal Standards Statement

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

#### Jobs Impact

The proposed amendments, repeal and new rule pertain to parole matters. It is not anticipated that any jobs will be generated or lost if the proposed amendments, repeal and new rule are adopted.

#### Agriculture Industry Impact

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

#### Regulatory Flexibility Statement

The proposed amendments, repeal and new rule 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 rule pertains to the administration of a polygraph examination of offenders serving a special sentence of community or parole supervision for life. The proposed amendments pertain to such matters, as the administrative appeal process, the establishment of conditions of supervision, the establishment of tentative parole release dates in the cases of juvenile inmates and the correction of Administrative Code and statutory citations. A regulatory flexibility analysis is, therefore, not required.

#### Smart Growth Impact

The proposed amendments, repeal and new rule will not impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

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

#### 10A:71-3.9 Inmate statements; adult inmates

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

(c) Such statement shall be filed within 15 days of the date the inmate receives his or her copy of such report, unless the inmate requests and receives a postponement of the hearing process pursuant to N.J.A.C. 10A:71-[3.50] 3.51.

#### 10A:71-3.13 Parole hearing procedures; adult inmates

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

(i) The inmate shall have the right to request, in writing, a postponement of the hearing at any time, and the hearing officer or Board panel may grant such request. However, such postponement shall not be deemed a waiver of the time limits contained in this subchapter unless authorized pursuant to N.J.A.C. 10A:71-[3.50] 3.51.

(j)-(m) (No change.)

#### 10A:71-3.22 Notice of tentative parole release dates; juvenile inmates

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

(c) Upon establishment of the tentative parole release date pursuant to N.J.A.C. 10A:71-3.23, [the juvenile Board panel] **designated Board staff** shall notify in writing the juvenile inmate's parent(s) or guardian(s), the committing court, the prosecuting authority, and the chief executive officer of the institution or designee of the tentative parole release date established. The chief executive officer or designee may further distribute notice of the tentative parole release date as deemed appropriate.

#### 10A:71-3.23 Establishment of tentative parole release dates; juvenile inmates

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

(c) **Tentative parole release dates in the cases of juvenile inmates serving a term of incarceration for the commission of an offense, which if committed by an adult would constitute a crime of the first or second degree shall be established by the juvenile Board panel. In all other cases, tentative parole release dates may be established by a hearing officer, a juvenile Board panel member or the juvenile Board panel.**

Recodify existing (c) and (d) as (d) and (e) (No change in text.)

[{e}] (f) The juvenile Board panel may establish a tentative parole release date outside the range contained in the provisions of (a) or (b) above, if a tentative parole release date within the range is clearly inappropriate in view of the circumstances of the act of delinquency, the prior record of delinquency, the characteristics of the inmate or the imposition of any extended term imposed pursuant to N.J.S.A. 2A:4A-44(d)(3) and (d)(4).

1.-2. (No change.)

3. The decision of the juvenile Board panel to establish a tentative parole release date, which is outside the range contained in the provisions of (a) or (b) above may be [reconsidered pursuant to N.J.A.C. 10A:71-4.1 or] appealed pursuant to N.J.A.C. 10A:71-[4.2(f)] 4.1(f).

Recodify existing (f) and (g) as (g) and (h) (No change in text.)

#### 10A:71-3.37 Inmate statements: county inmates

(a) It shall be the responsibility of the chief executive officer of the institution or designee to provide each inmate with a copy of the report filed pursuant to N.J.A.C. 10A:71-[3.35] 3.36 at the time such report is filed with the designated hearing officer or Board panel, except such information classified as confidential by the Board pursuant to N.J.A.C. 10A:71-2.1 or by the chief executive officer of the institution.

(b) (No change.)

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

(a) Any case referred to a Board panel by a hearing officer pursuant to N.J.A.C. 10A:71-[3.42]3.43 or by a Board member(s) or a Board member and a hearing officer pursuant to N.J.A.C. 10A:71-[3.43]3.44 shall be scheduled by the Chairperson for a hearing by the appropriate Board panel.

(b)-(i) (No change.)

#### [10A:71-4.1 Requests by inmates for reconsideration

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

1. The hearing officer, Board member, Board panel or Board was presented with inaccurate information, and such information substantially affected the decision being appealed.

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

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

## 10A:71-[4.2] 4.1 Appeals by inmates

(a)-(g) (No change.)

(h) A decision not to refer a parolee's case for an assessment as to whether the parolee is indigent and whether an attorney shall be assigned [from the list maintained in accordance with R.3:27-2] pursuant to the **pro bono assignment program** to represent the parolee at a preliminary hearing or parole revocation hearing conducted pursuant to N.J.A.C. 10A:71-7.7 and 7.14, respectively, shall be appealable to the Board.

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

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

## 10A:71-[4.3] 4.2 Appellate procedure

(a) All appeals submitted pursuant to N.J.A.C. 10A:71-4.1 [and 4.2] shall be filed in writing and within 180 days of written notice action or decision being received by the inmate and shall contain the reasons for the appeal and the criteria under which the appeal is submitted. An appeal submitted pursuant to N.J.A.C. 10A:71-[4.2(i)] 4.1(i) (failure to provide timely Board panel hearing) shall include reference to the inmate's actual parole eligibility date as established by the Board's staff.

(b) Appeals filed by inmates shall be considered by the Board panel, Board or Chairperson, as appropriate, within [45] 90 days of the date the appeal was received.

(c) (No change.)

(d) An appeal filed by an inmate pursuant to N.J.A.C. 10A:71-[4.2(i)] 4.1(i) (failure to provide timely Board panel hearing) shall be considered by the [Chairman] Chairperson and a written notification of the [Chairman's] Chairperson's decision provided to the inmate within 45 days of the date of the appeal being received.

(e) In the case of an appeal filed by an inmate pursuant to N.J.A.C. 10A:71-[4.2(i)] 4.1(i) (failure to provide timely Board panel hearing), the failure of the [Chairman] Chairperson to provide written notification of a decision within 45 days of the date the appeal was received shall be deemed a denial of the appeal. A denial shall constitute a final agency decision.

(f) (No change.)

## 10A:71-[4.4] 4.3 Review of hearing officer, Board member, [or] Board panel or Board decisions

(a) A **Board member**, Board panel or the **Board** may, upon [its own motion for] determining that good cause exists, reconsider any decision to grant, deny or revoke parole.

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

## 10A:71-6.4 Conditions of parole

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

1.-15. (No change.)

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

17. You are to submit to a polygraph examination at least once a year as directed by the District Parole Supervisor if you are serving a sentence for an offense enumerated in N.J.S.A. 2C:43-6.4.

(b)-(k) (No change.)

[l] In the case of an adult or young adult state inmate released on parole with the special condition that the inmate participate in one of the Department's alternative sanctions programs or the aftercare component of the Department's stabilization and reintegration program, the general conditions of the respective program shall be deemed to be special conditions of parole and shall remain in effect until the parolee is discharged from the respective program.]

[(m)] (l) (No change in text.)

## 10A:71-6.10 Transfer of parole supervision to out-of-State jurisdiction .

(a) The appropriate Board panel may permit a parolee to reside outside the State pursuant to the provisions of the [uniform act for out-of-State parolee supervision (N.J.S.A. 2A:168-14 et seq.)] **interstate compact for adult offender supervision** (N.J.S.A. 2A:168-26 et seq.) and the interstate compact [on] for juveniles (N.J.S.A. [9:23-1] 9:23B-1 et seq.) if the Board panel is satisfied that such change will not result in a substantial likelihood that the parolee will commit an offense, which would be a crime under the laws of this State.

(b)-(h) (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.-18. (No change.)

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

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

21. Submit to a polygraph examination at least once a year as directed by the District Parole Supervisor.

(c)-(o) (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.-19. (No change.)

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

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

22. Make payment to the Division of Parole of any assessment, fine, penalty or restitution imposed by the sentencing court; and

23. Submit to a polygraph examination at least once a year as directed by the District Parole Supervisor.

(e)-(k) (No change.)

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

(m)-(w) (No change.)

## 10A:71-6.13 Polygraph examinations

(a) Pursuant to N.J.S.A. 30:4-123.88, the Board, on at least an annual basis, may administer to all offenders serving a special sentence of community or parole supervision for life, imposed pursuant to N.J.S.A. 2C:43-6.4, polygraph examinations in order to

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obtain information necessary for risk management and treatment and to reduce the offender's denial mechanisms.

(b) A polygraph examination shall be conducted by a polygrapher trained specifically in the use of the polygraph for monitoring of sex offenders, where available, and shall be paid for by the offender.

(c) The results of the polygraph examination shall not be used as evidence in court to prove that a violation of the special sentence of community or parole supervision for life or condition of discharge pursuant to N.J.S.A. 30:4-27.36 has occurred.

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

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

(b) (No change.)

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

1. (No change.)

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

i.-ii. (No change.)

3.-9. (No change.)