

## **STATE PAROLE BOARD**

### **Parole Board Rules**

#### **Definitions, Records Designated Confidential, Access to Government Records, and Computation of Time**

**Proposed Amendments: N.J.A.C. 10A:71-2.1, 3.9, 3.13, 3.15, 3.18, 3.20, 3.27, 3.30, 3.32, 3.37, 3.41, 3.43, 3.46, 3.48, 3.52, 3.53, 5.7, 5.8, and 7.18 and 10A:72-9.7 and 9.13**

**Proposed New Rules: N.J.A.C. 10A:72-2.1, 2.3 through 2.7**

Authorized By: New Jersey State Parole Board, James T. Plousis, Chairman, with the approval of Gary M. Lanigan, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:4-123.48(d), 47:1A-1 and 52:17B-4; and Executive Order No. 9 (Gov. Richard J. Hughes, September 30, 1963)

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

Proposal Number: PRN 2011-174 (43 N.J.R. 2144(b))

Submit written comments by October 14, 2011 to:

David Thomas  
Executive Director  
New Jersey State Parole Board  
P.O. Box 862  
Trenton, New Jersey 08625-0862

The agency proposal follows:

#### **Summary**

On January 8, 2002, the Legislature passed and the Acting Governor approved P.L. 2001, c.404, known as the Open Public Records Act, which enacted changes in the law concerning public access to government records. The law became effective July 7, 2002. This law expanded the public's right of access to government records and facilitated the way in which that access is provided by the custodian of those records.

Section 18 of the law authorized public agencies to take administrative action as necessary for the smooth and efficient implementation of the Act.

The Act provides that all government records shall be subject to public access unless exempt from such access by: P.L. 1963, c.73, as amended and supplemented; any other statute; resolution of either or both houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Rules of Court; and any Federal law, Federal regulation or Federal order. The Act also provides that a public agency should be mindful of the need to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy.

On July 1, 2002, the State Parole Board, pursuant to N.J.A.C. 47:1A-1 et seq., as amended and supplemented, Executive Order No. 9 (Hughes 1963) and with the approval of the Commissioner of the Department of Corrections, proposed new rules to implement the act and to classify as exempt from public access certain records held or controlled by the State Parole Board. The proposed new rules were designed to serve legislative policies by facilitating public access to government records while, at the same time, balancing citizen's reasonable expectations of privacy and the integrity and effectiveness of governmental operations. The State Parole Board's rules were published at 34 N.J.R. 2187(a).

On July 5, 2002, Governor James E. McGreevey issued Executive Order No. 21, which directed that the records exempted from disclosure by the proposed rules were exempt under the Executive Order until the rules were adopted. Executive Order No. 21 was modified by Executive Order No. 26 issued by Governor McGreevey on August 13, 2002. Executive Order No. 26 modified the list of records considered exempt under

Executive Order No. 21 and the published rules. Neither Executive Order has been rescinded or further modified. The State Parole Board has operated under the authority of Executive Order No. 21 as modified. The rules proposed in July 2002 were not formally adopted in accordance with administration direction.

On June 5, 2010, the Appellate Division issued an opinion in the case *Slaughter v. Government Records Council*, 413 N.J. Super. 544, which overturned a decision of the Government Records Council and held that the exemptions of records from public access contained in the 2002 proposed rules recognized and continued in paragraph 4 of Executive Order No. 21 were not intended to be permanent in the absence of a rule. In view of the court opinion, the State Parole Board has decided to propose amendments and new rules related to the governing of access to government records and the designation of certain records as being confidential. The proposed amendments and new rules are as follows:

Proposed new N.J.A.C. 10A:71-2.1 is the definition section and includes the definition of such terms as “custodian” and “government record.”

Proposed amendments to N.J.A.C. 10A:71-2.1, redesignated 2.2, contains a list of records deemed by the State Parole Board to be confidential and not subject to public access under the provisions of N.J.S.A. 47:1A-1 et seq., as amended and supplemented. The list includes records related to such matters as medical, psychiatric or psychological history, diagnosis, treatment or evaluation; alcohol, drug or other substance abuse evaluation, history and/or treatment; and input provided by a victim, or, if the victim is deceased, the nearest relative of the victim during the parole process.

Proposed new N.J.A.C. 10A:71-2.3(a) provides that the Chairman shall designate a person to be the Board records custodian. This person is responsible for the processing of requests for government records.

Proposed new N.J.A.C. 10A:71-2.3(b) provides that the address and contact information for the records custodian shall be posted on the Board's website and otherwise be made available to the public.

Proposed new N.J.A.C. 10A:71-2.4(a) provides that all requests for access to government records under the public access to government records law must be on a prescribed form.

Proposed new N.J.A.C. 10A:71-2.4(b) provides that a requester include certain information on the required form. This information includes a name, address and telephone number; a brief description of the records requested, type of access (examination, inspection or copying) and medium requested; and the requester's signature and date submitted to the proper custodian.

Proposed new N.J.A.C. 10A:71-2.4(c) provides that copies of the form will be available at the Board's central and district parole offices and on the Board website.

Proposed new N.J.A.C. 10A:71-2.4(d) provides for the submission of an anonymous request for records.

Proposed new N.J.A.C. 10A:71-2.5(a) establishes the procedure for submitting requests for access to government records. Forms may be hand-delivered during normal business hours, mailed, or transmitted electronically to the Board custodian.

Proposed new N.J.A.C. 10A:71-2.5(b) provides that any member and employee of the Board who may receive a request for access to a government record shall direct the requester to submit the request to the Board custodian.

Proposed new N.J.A.C. 10A:71-2.5(c) provides that upon receipt of the form, the custodian shall review it for clarity and completeness and shall advise the requester of any deficiencies or request additional information, provided the requester has included contact information. The requester's identity may be required in order to determine whether access to the record is authorized.

Proposed new N.J.A.C. 10A:71-2.5(d) provides that the custodian will estimate the fee of providing the records.

Proposed new N.J.A.C. 10A:71-2.5(e) provides that the custodian may impose a special charge if a record needs to be converted into a medium not routinely used by the Board, not routinely developed or maintained by the Board or that requires a substantial amount of manipulation or programming of information technology.

Proposed new N.J.A.C. 10A:71-2.5(f) provides that the custodian may impose a special service charge to fulfill an extraordinary request to inspect or examine records.

Proposed new N.J.A.C. 10A:71-2.5(g) provides that the custodian shall sign and date the request form, enter the estimated fee, provide a tracking number, if applicable, and provide the requester with a copy of the form. If access to a record is denied, the custodian shall explain the basis for the denial.

Proposed new N.J.A.C. 10A:71-2.5(h) provides that the custodian shall notify the requester when the records are available.

Proposed new N.J.A.C. 10A:71-2.5(i) provides that the custodian shall collect any fee prior to the delivery of a copy of any record and provides for the method of payment.

Proposed new N.J.A.C. 10A:71-2.6(a) provides that the custodian shall grant or deny access within seven business days upon a completed request being received or such additional time as may be authorized by law, an administrative rule or as may be agreed to by the requester.

Proposed new N.J.A.C. 10A:71-2.6(b) provides that the requester shall be advised within seven business days if the record is in storage or archived and advised when the record can be made available.

Proposed new N.J.A.C. 10A:71-2.6(c) provides that the seven days business time period commences on the first business day following the receipt of a completed request and ends at the close of business on the seventh business day.

Proposed new N.J.A.C. 10A:71-2.6(d) provides that the failure to grant access in a timely manner shall be deemed a denial of the request.

Proposed new N.J.A.C. 10A:71-2.7(a) provides that the cost of providing a government record shall be that set forth in N.J.S.A. 47:1A-1 et seq.

Proposed new N.J.A.C. 10A:71-2.7(b) provides that unless a special charge is required to fulfill a request for records maintained electronically, only the cost of the medium used by the Board to reproduce records shall be charged. Access to electronic records and non-printed material shall be provided free of charge.

Proposed new N.J.A.C. 10A:71-2.7(c) provides that a requester shall be given the opportunity to review and object to the imposition of a special service charge, special

charge or cost of the medium prior to being incurred. If the requester objects to a charge and a reasonable solution cannot be reached, the custodian may deny the request.

Existing N.J.A.C. 10A:71-2.2 through 2.5 are recodified as N.J.A.C. 10A:71-2.8 through 2.11 with no change in text.

Proposed amendments to N.J.A.C 10A:71-3.48(o) and N.J.A.C. 10A:71-5.7(c) delete reference to the phrase “and shall not be released to the inmate” as said phrase is deemed unnecessary and insert reference to N.J.A.C. 10A:71-2.2, the section that identifies those records designated as confidential.

Various proposed amendments merely correct references to New Jersey Administrative Code citations.

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**

The proposed amendments and new rules implement the requirements of N.J.S.A. 47:1A-1 et seq. as amended and supplemented by P.L. 2001, c.404. The proposed amendments and new rules will have a positive social impact by establishing a procedure for public access to government records held or controlled by the State Parole Board. The law requires that government records be readily accessible for inspection, copying or examination by citizens of this State unless exempt by law or regulation, but also calls upon a public agency to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure would violate the citizen's reasonable expectation of privacy. These proposed new rules attempt to balance the competing

policies in the statute and to exclude records where it would not be in the public interest to permit disclosure or copying of certain records. The proposed new rules also provide safeguards to protect individuals participating in the parole release and parole supervision processes from the fear of intimidation, reprisal or personal injury as the State Parole Board functions relate to the granting, the denying and the revocation of parole of offenders who have violated the laws of this State by the commission of criminal acts.

### **Economic Impact**

The proposed amendments and new rules will not have an economic impact on the public in excess of that provided by the statute. Persons requesting copies of government records will be required to pay the fees authorized by the statute for copies of records. The proposed rules do not impose any additional costs. The cost incurred will depend on the type and volume of records requested and the medium of delivery.

The State Parole Board, however, will incur costs in processing requests for access to government records in the time set by the Act.

### **Federal Standards Statement**

A Federal standards analysis is not required because the proposed amendments and new rules are not subject to any Federal standards. The Federal Freedom of Information Act, 5 U.S.C. §§ 550a et seq., does not apply to records of State government and does not constitute a Federal standard.

### **Jobs Impact**

The proposed amendments and new rules will cause neither the generation nor the loss of any jobs.

### **Agriculture Industry Impact**

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

### **Regulatory Flexibility Analysis**

The proposed amendments and new rules do not impose reporting or recordkeeping requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules impose compliance requirements on State Parole Board staff and on all persons seeking access to government records pursuant to N.J.S.A. 47:1A-1 et seq. as amended and supplemented. All persons, including small businesses, will be required to submit requests for access to government records on a form approved by the State Parole Board. The statute authorizes fees for copies of government records. There is no exception for small businesses. The cost depends on the number of copies requested. The proposed new rules provide that the fee will be that set forth in the statute. The cost to the State Parole Board of providing the record does not depend on whether the requester is a small business.

### **Smart Growth Impact**

The proposed amendments and 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 Analysis**

The proposed amendments and new rules will not have an impact on housing affordability. The proposed amendments and new rules pertain to the access to certain government records and the designation of certain government records as confidential.

The proposed amendments and 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 Analysis**

The proposed amendments and new rules pertain to the access to certain government records and the designation of certain government records as confidential. The proposed amendments and the new rules will, therefore, have no impact on housing units, the increase or decrease in the availability of affordable housing or new construction 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]):

#### **SUBCHAPTER 2. RECORDS; GENERAL ADMINISTRATIVE PROVISIONS**

##### **10A:71-2.1 Definitions**

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

**“Access” shall mean granting a requester the opportunity to inspect, examine or obtain a copy of a government record.**

**“Anonymous” shall mean a requester of records who does not provide their name or provides only an e-mail address.**

**“Custodian” or “custodian of records” shall mean the employee of the Board designated by the Chairperson to administer the provisions of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.**

**“Fee” shall mean any amount due including the cost of copies of government records, special service charge, service charge and postage.**

**“Government record” or “record” shall mean any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of the Board's official business by any employee or member of the Board, or that has been received in the course of the Board's official business by any employee or member of the Board. The terms shall not include inter-agency or intra-agency advisory, consultative or deliberative material.**

**“Medium” shall mean the generic form in which a government record is maintained; that is, paper, computerized form, or microfilm. With respect to records in computerized form, the medium is related to the type of device on which the record is stored, for example, diskette, hard-drive, storage tape.**

**“Special charge” shall mean a charge to the requester in addition to the cost of duplicating records that are converted from one medium to another that is reasonable and based on the cost for any extensive use of information technology, or for the labor cost of personnel providing the service that is actually incurred by the Board or attributable to the Board for the programming, clerical, and supervisory assistance required, or both.**

**“Special service charge” shall mean a charge to a requester that is reasonable and based upon the actual direct cost of providing the copy or copies of records, or access to inspect or examine records.**

10A:71-[2.1]2.2 [Confidentiality of information and records] **Records designated confidential**

(a) [The following information, files, documents, reports, records or other written material submitted to, prepared and maintained by or in the custody of the Board, any Board member or employee pertaining to parole and parole supervision are deemed confidential:] **In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 et seq., any other law, regulation 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. [Reports which are evaluative, diagnostic or prognostic in nature, furnished with a legitimate expectation of confidentiality and which, if revealed to the inmate/parolee or others, could be detrimental to the inmate, adversely affect the inmate's rehabilitation or the future delivery of rehabilitative services, jeopardize the physical safety of individuals who signed the reports or were parties to the decisions, conclusions, or statements contained therein] **Information, files, documents, reports, records or other written materials concerning an offender's medical, psychiatric or psychological history, diagnosis, treatment or evaluation;**

2. [Information, files, documents, reports, records or other written materials which, if disclosed, could have an adverse impact on the security or orderly operation of an institution] **Information, files, documents, reports, records or other written materials concerning an offender's alcohol, drug or other substance abuse evaluation, history and/or treatment;**

3. Information, files, documents, reports, records or other written materials [which] **that**, if disclosed, would infringe or jeopardize privacy rights of the [inmate/parolee] **offender** or others or endanger the life or physical safety of any person;

4. [Disciplinary and investigative] **Investigative reports or information**, including those from informants[, which] **that**, if disclosed, would impede ongoing investigations, create a risk of reprisal, or interfere with the security or orderly operation of an institution **or a community program**;

5. Investigative reports or information compiled or intended for law enforcement purposes [which] **that**, if disclosed, would impede ongoing investigations, interfere with law enforcement proceedings, constitute an unwarranted infringement of personal privacy, reveal the identity of a confidential source or confidential information furnished only by a confidential source, reveal investigative techniques and procedures, or endanger the life or physical safety of law enforcement personnel, confidential informants, victims or witnesses;

6. Information, files, documents, reports, records or other written materials [which] **that**, if disclosed, would impede Board functions by discouraging persons from providing information to the Board;

[7. Information, files, documents, reports, records or other written materials classified as confidential pursuant to the Department's, Commission's or another agency's rules, statutory provisions or judicial decisions;]

[8. A] **7. An electronic recording or a transcript**, if prepared, of any proceeding of the Board;

[9.] **8.** Such other information, files, documents, reports, records or other written materials as the Board may deem confidential to insure the integrity of the parole and parole supervision processes; and

**9. A record that consists of information, statement or testimony in written, audio or video form provided by a victim or, if the victim is deceased, the nearest relative of the victim. This shall include, but not be limited to, any information obtained pursuant to N.J.A.C. 10A:71-3.48, victim registration, the continuing notice and the extent of any physical harm or psychological or emotional harm or trauma suffered by the victim, the extent of any loss of earnings or ability to work suffered by the victim, the continuing effect of the crime upon the victim's family, personal information pertaining to the victim or victim's family such as the victim's home address, home telephone number, work or school address, work telephone number, social security account number, medical history or any other identifying information unless the requested information, statement or testimony in written, audio or video form was given at a public proceeding;**

[10. All information, statements or testimony provided by a victim or nearest relative of a murder/manslaughter victim.]

[(b) All information, files, documents, reports, records or other written materials prepared and maintained by or in the custody of the Board, any Board member or employee pertaining to the administrative operations of the Board are deemed confidential.]

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

Recodify existing N.J.A.C. 10A:71-2.2 to 2.5 as N.J.A.C. 10A:71-2.8 to 2.11 (No change in text.)

### **10A:71-2.3 Designation of custodian of records**

(a) The Chairperson shall designate a custodian of records for the Board, who shall be responsible for accepting and processing requests for access to government records of the Board.

(b) The address and other contact information for the custodian of records shall be posted on the Board's website [www.state.nj.us/parole](http://www.state.nj.us/parole) and otherwise made available to the public. The contact information is as follows:

**Title:** Custodian of Records  
State Parole Board

**Street Address:** 171 Jersey Street, Building #2  
Trenton, New Jersey 08611

**Mailing Address:** PO Box 862  
Trenton, New Jersey 08625-0862

### **10A:71-2.4 Requests for government records**

(a) All requests for access to government records of the Board pursuant to N.J.S.A. 47:1A-1 et seq. shall be in writing on a form that meets the requirements of N.J.S.A. 47:1A-5(f) and is adopted by the custodian of records.

(b) The requester shall be requested to provide the following information on the form:

- 1. The name, address, and telephone number of the requester;**
- 2. A description of the government record sought, method of access and if copies are sought, the medium requested and mode of delivery; and**
- 3. The signature of the requester and the date submitted to the custodian of records.**

**(c) Copies of the request form shall be available at the office of the custodian of records, all district parole offices, and the Board website.**

**(d) An anonymous request may be submitted; however, if information necessary to the fulfillment of the request is not provided, the request shall not be considered a valid request until the requester provides such information.**

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

**(a) Request forms may be hand-delivered during normal business hours of the Board, mailed, or transmitted electronically by the requester to the custodian of records.**

**(b) Any member or employee of the Board who receives a request for access to a government record shall direct the requester to submit the request to the custodian of records.**

**(c) Upon receipt of a request form, the custodian of records shall review the request form for clarity and completeness. If the request form is unclear as to the government record requested, the custodian shall advise the requester of the deficiency, provided contact information is included on the form. The custodian may require the requester to provide additional information to identify the record or to ascertain the requester's identity and status to determine whether access is authorized. The custodian may deny a request for access if the request is unclear or incomplete after attempting to reach a reasonable resolution with the requester.**

**(d) Upon receipt of a request form, the custodian of records shall estimate the fee of providing the records.**

**(e) The custodian of records may impose a special charge to fulfill a request that requires the conversion of a government record to a medium not routinely used**

by the Board, not routinely developed or maintained by the Board, or that requires a substantial amount of manipulation or programming of information technology.

(f) The custodian of records may impose a special service charge to fulfill an extraordinary request to inspect or examine records.

(g) When responding to the request, the custodian of records shall sign and date the request form, enter the estimated fee and, if applicable, tracking number, and provide the requester with a copy. If access to a record is denied, the custodian shall explain in writing the reason for the denial on the form or an attachment.

(h) The custodian of records shall notify the requester when the records are available.

(i) The custodian of records shall collect any fee due to prior to delivery of the copies of records. Payment shall be made by cash, check or money order payable to the State of New Jersey. When payment is made by cash, the exact amount shall be required.

#### **10A:71-2.6 Timeliness of response**

(a) The custodian of records shall grant or deny access within seven business days after receiving a request completed in accordance with N.J.A.C. 10A:71-2.4 or such additional time as may be authorized by law or these rules or as may be agreed to by the requester.

(b) If the record is in storage or archived, the requester shall be so advised within seven business days after the custodian of records receives the request. The requester shall also be advised by the custodian when the record can be made available.

**(c) The calculation of business days shall begin on the first business day following receipt of the completed request by the custodian and shall end at the close of business on the seventh business day.**

**(d) The failure to respond to a request in a timely manner shall be deemed a denial of the request.**

#### **10A:71-2.7 Fees for copies**

**(a) The costs for providing a government record shall be that set forth in N.J.S.A. 47:1A-1 et seq.**

**(b) Unless a special charge is required to fulfill a request for records that are maintained electronically, only the cost of the medium used by the Board to reproduce records shall be charged. Access to electronic records and non-printed material shall be provided free of charge.**

**(c) Whenever charges are imposed for a special service charge, a special charge or medium pursuant to (b) above, the requester shall be given the opportunity to review and object to the charge prior to it being incurred. If the requester objects to the charge and refuses to withdraw the request, the custodian of records may deny the request after attempting to reach a reasonable solution that accommodates the interests of the requester and the Board.**

#### **SUBCHAPTER 3. PAROLE RELEASE HEARINGS**

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

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

confidential [by the Board] pursuant to N.J.A.C. 10A:71-[2.1] **2.2** or the rules and regulations of the Department.

(b) – (c) (No change.)

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

(a) – (c) (No change.)

(d) All such evidence not classified as confidential pursuant to N.J.A.C. 10A:71-[2.1] **2.2** or the rules and regulations of the Department shall be disclosed to the inmate.

(e) – (f) (No change.)

(g) The inmate shall have the right to be aided by a Board representative pursuant to N.J.A.C. 10A:71-[2.5] **2.11**.

(h) – (m) (No change.)

10A:71-3.15 Initial hearing and case review notice of decision; adult inmates

(a) – (c) (No change.)

(d) Such case assessment shall consist of the hearing officer's determination and the reasons therefor, except information classified as confidential pursuant to N.J.A.C. 10A:71-[2.1] **2.2** or the rules and regulations of the Department.

(e) (No change.)

10A:71-3.18 Board panel hearing; notice of decision for adult inmates

(a) – (e) (No change.)

(f) Such notice shall consist of the decision of the Board panel, and, if the Board panel's decision is to deny parole or defer decision, the notice shall contain the reasons therefor, except information classified as confidential pursuant to N.J.A.C. 10A:71-[2.1] **2.2** or the rules and regulations of the Department.

10A:71-3.20 Board hearing; notice of decision for adult inmates

(a) – (d) (No change.)

(e) Such notice shall consist of the decision of the Board and, if the Board's decision is to deny or defer decision, the notice shall contain the reasons therefor, except information classified as confidential pursuant to N.J.A.C. 10A:71-[2.1] **2.2** or the rules and regulations of the Department.

10A:71-3.27 Quarterly review procedures; juvenile inmates

(a) – (c) (No change.)

(d) Prior to the evaluation segment of the quarterly review, a designated Board representative, the hearing officer, or the juvenile Board panel member(s) shall discuss with and explain to the juvenile inmate all documents relevant to the juvenile inmate's case, except information classified as confidential pursuant to N.J.A.C. 10A:71-[2.1] **2.2** or the rules and regulations of the Commission.

10A:71-3.30 Board member review; juvenile inmates

(a) (No change.)

(b) A written report shall be filed with the juvenile Board panel within 21 days of the decision and shall consist of the determination of the juvenile Board panel member and the reasons therefor, except that information classified as confidential pursuant to N.J.A.C. 10A:71-[2.1] **2.2** or the rules and regulations of the Commission. A copy of such notice shall be forwarded to the juvenile inmate, the juvenile's parent(s) or guardian(s), the committing court, the prosecutor, and the chief executive officer of the institution or designee. The chief executive officer or designee may further distribute the report as deemed appropriate.

(c) – (d) (No change.)

10A:71-3.32 Juvenile Board panel case reviews

(a) – (g) (No change.)

(h) The juvenile Board panel shall file a report of such case review within 21 days with the Board, the Commission, the committing court, the prosecutor, the chief executive officer of the institution or designee, the juvenile inmate and the juvenile's parents or guardians. Such report shall consist of the decision of the panel and the reasons therefor, except information classified as confidential pursuant to N.J.A.C. 10A:71-[2.1] **2.2** or the rules and regulations of the Commission. The chief executive officer or designee may further distribute the report as deemed appropriate.

(i) – (j) (No change.)

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:71-3.36 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] **2.2** or by the chief executive officer of the institution.

(b) (No change.)

10A:71-3.41 Parole hearing procedures: county inmates

(a) (No change.)

(b) All information not classified as confidential pursuant to N.J.A.C. 10A:71-[2.1] **2.2** or by the chief executive officer of the institution shall be disclosed to the inmate.

10A:71-3.43 Initial hearing notice of decision; county inmates

(a) – (b) (No change.)

(c) Such case assessment shall consist of the hearing officer's determination and the reasons therefor, except information classified as confidential pursuant to N.J.A.C. 10A:71-[2.1] **2.2** or by the chief executive officer of the institution.

(d) (No change.)

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

(a) – (b) (No change.)

(c) Such notice shall consist of the decision of the Board panel, and, if the Board panel's decision is to deny parole or defer decision, the notice shall contain the reasons therefor, except information classified as confidential pursuant to N.J.A.C. 10A:71-[2.1] **2.2** or by the chief executive officer of the institution.

10A:71-3.48 Victim input

(a) Any victim injured as a result of a crime of the first or second degree or the nearest relative of a murder/manslaughter victim shall be entitled to present a written or videotaped statement for the parole report, filed pursuant to N.J.A.C. 10A:71-3.7, to be considered during the parole hearing process, to present testimony to a senior hearing officer designated by the Board panel, to present testimony to the Board panel, or to present testimony to the Board, if a hearing is conducted pursuant to N.J.A.C. 10A:71-3.19, concerning the victim's harm. Upon the request of a victim or the nearest relative of a murder/manslaughter victim or at the discretion of a Board panel or the Board, a copy of the parole report, except information, documents, reports, records or other written materials deemed confidential pursuant to N.J.A.C. 10A:71-[2.1] **2.2**, prepared pursuant to N.J.A.C. 10A:71-3.7 shall be provided to the victim or the nearest relative of a murder/manslaughter victim.

(b) – (n) (No change.)

(o) Any and all statements or testimony of the victim or nearest relative of a murder/manslaughter victim submitted to the Board pertaining to the continuing nature and extent of any physical harm or psychological or emotional harm or trauma suffered by the victim, the extent of any loss of earnings or ability to work suffered by the victim and the continuing effect of the crime upon the victim's family shall be deemed confidential [and shall not be released to the inmate] **pursuant to N.J.A.C. 10A:71-2.2.**

(p) – (r) (No change.)

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

(a) – (e) (No change.)

(f) Information, files, documents, reports, records or other written material submitted to the Board by an out-of-state or Federal institutional authority shall be deemed confidential as specified in N.J.A.C. 10A:71-[2.1] **2.2.** The Board, however, shall maintain the confidentiality of any information, files, documents, reports, records or other written material as specified by the out-of-state or Federal institutional authority.

(g) – (r) (No change.)

10A:71-3.53 Medical parole

(a) – (m) (No change.)

(n) If, after review of a medical diagnosis required under (m) above, the Board panel determines that a parolee released on medical parole is no longer so debilitated or incapacitated by a terminal condition, disease or syndrome as to be physically incapable of committing a crime, the parolee shall be returned to confinement in an appropriate facility designated by the Commissioner.

1. A decision to return the parolee to confinement shall be rendered only by the Board panel after a hearing conducted by the Board panel or by a hearing officer designated by the Chairperson.

i. – iii. (No change.)

iv. Within 21 days of the hearing, the appropriate Board panel shall issue a written decision to the parolee which shall include the decision of the Board panel and the particular reasons for the decision and the facts relied on, except information classified as confidential [by the Board] pursuant to N.J.A.C. 10A:71-[2.1] **2.2**.

2. (No change.)

(o) – (q) (No change.)

#### SUBCHAPTER 5. SUSPENDING OR RESCINDING A PAROLE RELEASE DATE

##### 10A:71-5.7 Parole rescission hearing; notice of hearing

(a) Upon the initiation of the rescission hearing process, the Board panel shall provide the inmate with written notification of the reasons for the hearing, the purpose of the hearing and the information and material to be considered at the hearing, except information classified as confidential pursuant to N.J.A.C. 10A:71-[2.1] **2.2** or the rules and regulations of the Department or Commission.

(b) Such notification shall inform the inmate of the following rights to which he or she shall be entitled at the rescission hearing:

1. – 2. (No change.)

3. The right to present witnesses to testify in his or her behalf as to matters relevant to the hearing in accordance with N.J.A.C. 10A:71-[2.4] **2.10**.

4. – 6. (No change.)

7. The right to disclosure of adverse information except as provided in N.J.A.C. 10A:71-[2.1] **2.2** or the rules and regulations of the Department or Commission.

(c) When a rescission hearing is conducted pursuant to N.J.A.C. 10A:71-3.48(n)1iii, any and all statements or testimony of the victim or nearest relative of a murder/manslaughter victim submitted to the Board pursuant to N.J.A.C. 10A:71-3.48 and the identity of the person submitting such statements or testimony shall be deemed confidential [and shall not be released to the inmate] **pursuant to N.J.A.C. 10A:71-2.2**. Further, confrontation and cross-examination of the person providing statements or testimony to the Board pursuant to N.J.A.C. 10A:71-3.48 shall not be permitted.

10A:71-5.8 Parole rescission hearing; notice of decision

(a) (No change.)

(b) If the rescission hearing is conducted by a hearing officer, the hearing officer shall prepare a written summary of the rescission hearing.

1. Such hearing summary shall be forwarded to the appropriate Board panel, and a copy of the summary shall be forwarded to the inmate's attorney or directly to the inmate where he or she has appeared pro se, in order that the inmate or his or her attorney may object or comment on the hearing summary by submitting written exceptions to the hearing summary. Such exceptions shall be forwarded to the Board panel within 14 days after the receipt of the hearing summary. The provisions of N.J.A.C. 10A:71-[2.1] **2.2** shall be applicable to any hearing summary provided to the inmate.

2. – 3. (No change.)

(c) – (d) (No change.)

## SUBCHAPTER 7. REVOCATION OF PAROLE

10A:71-7.18 Revocation hearing; notice of decision

(a) (No change.)

(b) Such Notice of Decision shall consist of:

1. (No change.)

2. The particular reasons for the decision and the facts relied upon, except information classified as confidential [by the Board] pursuant to N.J.A.C. 10A:71-[2.1] **2.2**; and

3. (No change.)

## CHAPTER 72. DIVISION OF PAROLE

### SUBCHAPTER 9. VOLUNTEERS IN PAROLE PROGRAM (V.I.P.P.)

#### 10A:72-9.7 Volunteer responsibilities

(a) All volunteers shall agree to abide by the following rules:

1. – 2. (No change.)

3. The volunteer shall not discuss Division of Parole business with unauthorized persons, and shall maintain confidentiality of information in accordance with N.J.A.C. 10A:71-[2.1] **2.2**;

4. – 11. (No change.)

#### 10A:72-9.13 Curtailing, suspending or discontinuing the services of a volunteer

(a) The District Parole Supervisor may curtail, suspend or discontinue the services of a volunteer for reasons which include, but are not limited to:

1. Any breach of confidentiality ([see] N.J.A.C. 10A:71-[2.1] **2.2**, Records **designated confidential**);

2. – 6. (No change.)