

ATTORNEY GENERAL

October 27, 1975

CHRISTOPHER DEITZ, *Chairman*
New Jersey State Parole Board
Trenton, New Jersey

FORMAL OPINION NO. 29 - 1975

Dear Mr. Deitz:

The Parole Board has requested an opinion as to whether it may engage in a system of contract parole as an innovative means for the rehabilitation and parole of inmates incarcerated in our correctional institutions. You are advised that a proposal for a system of contract parole is permissible within our existing statutory framework provided the terms of the contract are consistent with the statutory responsibilities of the Parole Board.

A contract of parole is a mutually agreed upon document stipulating specific rehabilitative programs to be provided by a correctional institution, the inmates' agreement to successfully complete the prescribed program and objectives specified, and a parole at a fixed time contingent upon the successful fulfillment of these objectives. We have been advised that inmates who have been convicted of less serious nonviolent crimes and whose minimum parole eligibility dates fall not more than 30 nor less than 9 months from the date of sentencing will be selected for participation in the program. The contract will consist of a standard format with flexibility to negotiate the individual rehabilitative objectives to be pursued by the inmate, such as vocational training, work assignments, education, treatment and discipline. The program represents a cooperative effort between an inmate, the correctional facility and the Parole Board to design an individualized program to prepare an inmate for successful re-entry into society on a fixed date in the future.

An analysis of this issue must proceed with a review of the applicable New Jersey statutory provisions governing the responsibilities of the Parole Board. The New Jersey State Parole Board (hereinafter "Board"), pursuant to N.J.S.A. 30:4-123.1 *et seq.*, is the State agency empowered to determine when, and under what conditions, persons serving sentences having fixed minimum terms or serving sentences for life in the several correctional institutions of the State may be released on parole. N.J.S.A. 30:4-123.5. The Board is authorized to promulgate reasonable rules and regulations establishing the general conditions under which parole might be granted or revoked. N.J.S.A. 30:4-123.6. Once an inmate becomes eligible for parole pursuant to the time limitations set forth in N.J.S.A. 30:4-123.10 *et seq.*, and "when the board has been furnished all existing available records pertaining to the prisoner it shall consider the merits of his parole and shall make such other investigation as it shall deem necessary and proper." N.J.S.A. 30:4-123.9. The Board shall also consider the institutional report of the inmate's "behavior, discipline, type and manner of work performed, his own efforts to improve his mental and moral condition and his attitude toward society and the law enforcement officials responsible for his arrest, conviction and sentence." N.J.S.A. 30:4-123.18. Additionally, the personal views and recommendations of at least one of the Board members as to the prisoner and his eligibility for release are considered. A prisoner is not to be released on parole merely as a reward for good conduct or efficient performance of institutional duties, but only when, in the opinion of the Board, there is a reasonable probability that he will assume his proper place in society, without violation of law, and that his release will not be incompatible with the welfare of society. N.J.S.A. 30:4-123.14.

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The above statutory scheme evidences no legislative mandate as to the precise point in time prior to actual release when a meaningful determination may be made as to the probable compatibility of the inmate's release with the welfare of society. Consequently, there is no proscription against the Parole Board making its primary evaluation on this score prior to the time the inmate reaches his minimum eligibility date for parole. The Parole Board may initially consider all existing available records pertaining to the prisoner, consider the merits of his parole and make such other investigation as it shall deem necessary and proper to assure itself of the likelihood that the inmate upon release, after fulfilling his contract, will assume his proper and rightful place in society.

It should be understood, however, that the Board retains a continuing responsibility for the review consistent with all statutory requirements of the release of any inmate prior to his parole. Such a reservation of authority in the Board to consider an inmate's entire institutional record is an implicit and should be an express condition of any contract of parole and allows for its rescission under circumstances unforeseen at the time of the making of the agreement.

In any event, under the circumstances described by the Parole Board pertaining to the proposed program, it would appear that the exercise of its reserved authority to deny parole would be rare and does not realistically interfere with the binding nature of the commitment. It would simply assure against the inappropriate release of a socially unadaptive inmate. For these reasons, a system of contract parole is consistent with the New Jersey statutory framework for the parole and release of inmates confined to New Jersey State correctional institutions.

Very truly yours,
WILLIAM F. HYLAND
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

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October 27, 1975

FORMAL OPINION NO. 30—1975

Dear Mr. Kaden:

You have requested an opinion as to the constitutionality of Assembly Bill 587 Official Copy Reprint which would exempt individuals who have attained seventy years of age or older from jury duty at their own option. Assembly Bill 587 OCR would amend N.J.S.A. 2A:69-2 to provide in pertinent part: