

FORMAL OPINION

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,
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Attorney General

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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:

ATTORNEY GENERAL

"The following persons shall be exempt from service on any panel of grand or petit jurors:

* * *

"m. Any person who is 70 years of age or older and who notifies the jury commissioners of the county of his residence that he does not wish to serve as a juror."

You are advised, for the following reasons, that the enactment of Assembly Bill 587 OCR would represent a constitutional exercise of the State's power to establish a system of juror qualifications and exemptions. There would not appear to be any constitutional infirmity by reason of either discrimination on the basis of age, or a deprivation of a criminal defendant's Sixth and Fourteenth Amendment rights to an impartial jury trial.

Thus far, no attack upon a jury system has been brought by a member of an excluded age group asserting that his own rights have been violated.* The exact language of the bill is for these purposes particularly critical. The requirement that the exempted individual first notify the jury commissioners indicates that he will have the prerogative of exercising the option which he has been granted. Consequently, the excluded citizen would merely refuse to utilize the optional exemption and thereby retain his eligibility for jury service. Since that determination is left to the personal preference of the individual, any constitutional defect based upon discrimination on the basis of age would not appear to be relevant.

There also would not seem to be any constitutional infirmity by reason of an alleged constitutional deprivation of a criminal defendant's rights pertaining to the composition of a jury. The New Jersey cases of *State v. Stewart*, 120 N.J. Super. 509 (App. Div. 1972), and *State v. Anderson*, 132 N.J. Super. 231 (App. Div. 1975) are illustrative. These decisions arose from contentions that the mandatory exclusion of 18 to 21 year olds from prospective jury service, a procedure subsequently eliminated by L. 1972, c. 81, violated the defendants' constitutional protections. See N.J.S.A. 2A:69-1. In *Stewart*, the court concluded that the exclusion did not result in the denial of a 19 year old's Sixth and Fourteenth Amendment rights to an impartial jury trial, since "[T]he constitutional power of the State to provide such age qualifications for jurors is clear." 120 N.J. Super. at 510. Similarly, the court in *Anderson* determined that the prohibition did "not offend constitutional standards of due process." 132 N.J. Super. at 233. These cases are generally representative of the most recent judicial decisions pertaining to mandatory exclusion of persons within particular age groups. See also *King v. United States*, 346 F. 2d 123, 124 (1st Cir. 1965).

In *Taylor v. Louisiana*, 419 U.S. 522 (1975), a convicted male criminal defendant challenged the constitutionality of a state law which excluded women from jury service unless they had previously taken affirmative action by filing a written declaration of their desire to participate. After carefully reviewing its earlier statements on the issue of an impartial jury trial, the United States Supreme Court affirmed that there need be a fair cross section of the community on venires, panels or lists from which petit juries are drawn, without setting down any specific guidelines for its satisfaction. *Taylor v. Louisiana*, *supra*, at 526-31. Although the Court found that the purposeful exclusion of women from the jury rolls violated this mandate, it did recognize that certain exemptions could be granted. It merely determined that states "must not systematically exclude distinctive groups in the community," to insure that the panels or venires will "be reasonably representative thereof." *Id.* at 538.**

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Assembly Bill 587 OCR is distinguishable from the provision struck down in *Taylor* in two significant respects. The individual under the Louisiana scheme was presumptively excluded. In this case, Assembly Bill 587 OCR would include the affected person unless he took the affirmative step of claiming the exemption. Furthermore, although the class of all qualified women is readily identifiable, a group composed of members of a particular age has never been viewed as being cognizable for the validity of a jury selection process. Assembly Bill 587 OCR would not, therefore, result in the systematic and purposeful exclusion of an identifiable class in the community, as was the situation in *Taylor*.

For these reasons, you are advised that Assembly Bill 587 OCR, if enacted, would withstand a constitutional challenge, whether founded upon charges of discrimination on the basis of age or an alleged deprivation of a criminal defendant's Sixth and Fourteenth Amendment rights.

Very truly yours,
WILLIAM F. HYLAND
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

* Our own statutory scheme, in addition to the proposal which is the subject of your inquiry, specifically restricts the category of qualified jurors to individuals who are "under 75 years of age." N.J.S.A. 2A:69-1. The two provisions specify different ages for their application, and would, therefore, be entirely consistent. Consequently, the effect of Assembly Bill 587 OCR would be to establish a particular range, within which an individual would be able to avail himself of an exemption from service. It would have no impact upon the preexisting limit imposed by N.J.S.A. 2A:69-1.

**The Court's earlier recognition of "specified qualifications of age," both minimum and maximum, as being properly within the states' power to establish criteria for their own jury systems, *Carter v. Jury Commission*, 396 U.S. 320, 332, 335 (1970), is of direct relevance to this discussion. In *Taylor*, the Court expressly stated that it was not departing from the principles which had been set forth in *Carter*. *Taylor v. Louisiana, supra*, at 538. States would therefore still be empowered to utilize age guidelines both for the granting of exemptions and for the formulation of qualifications for potential jurors.