

FORMAL OPINION

persons. However, a refusal to consent to blood transfusions may be taken into account along with other pertinent factors bearing on the best interests of the child.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: JOSEPH M. GORRELL
Deputy Attorney General

* An administrative policy to impose a blanket prohibition on the adoption of children by Jehovah's Witnesses also raises questions under the Freedom of Religion Clause of the First Amendment to the United States Constitution. Since the likelihood or the need for a transfusion is remote and could in any event be ordered by a court, there is some question whether there would be a constitutionally sufficient justification in furtherance of the best interests of the child for such an absolute ban.

October 9, 1979

CHRISTOPHER DIETZ, *Chairman*
New Jersey State Parole Board
Whittlesey Road
Trenton, New Jersey

FORMAL OPINION NO. 21—1979

Dear Chairman Dietz:

On September 1, 1979 the New Jersey Code of Criminal Justice became effective. The Code substantially revises and codifies the State's criminal law and also impacts on the parole process. As a result, you have asked for our advice with regard to the interpretation of N.J.S.A. 2C:43-9(b) and 2C:46-2 insofar as those statutes bear on the parole revocation process under the jurisdiction of the State Parole Board. In particular, you inquire whether N.J.S.A. 2C:43-9(b) prohibits the forfeiture of credit for time served on parole ("street time") and whether the Parole Board has the authority to revoke parole where a parolee has failed to pay a fine in the manner directed by the Board. It is our opinion that the forfeiture of "street time" on the reimprisonment of an offender upon revocation of his parole is prohibited by the Code. The Parole Board however does retain its preexisting authority to revoke parole because of the failure of a parolee to pay a fine.

Prior to the enactment of the Penal Code, N.J.S.A. 30:4-123.24 provided for the forfeiture of "street time" upon the revocation of parole by the Parole Board. This meant an offender, whose parole had been revoked and then reincarcerated, would lose credit against his sentence for all or part of the time spent on parole. The maximum expiration date of the sentence ordinarily would be administratively extended. The specific

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reason for the revocation of the parole would determine the precise amount of the forfeiture. *Bonomo v. New Jersey State Parole Board*, 104 N.J. Super. 226 (App. Div. 1969).

In 1968 a Criminal Law Revision Commission was created by the Legislature and charged with the responsibility of developing a new comprehensive criminal code. The Commission recommended that the practice of forfeiting "street time" upon parole revocation be abolished. The Commission stated:

A change in existing law is effected by Section 2C:43-9c concerning the period of time which an offender could be required to serve in prison or on reparole, following a revocation of parole. The longer of either the parole term or the maximum sentence, viewed from the date of conviction, governs. It is this period for which the offender may be re-imprisoned upon revocation of parole or subjected to supervision upon re-parole. Time served successfully upon parole prior to revocation serves to reduce the parole term and the maximum sentence despite a later revocation; the offender is not required to 'back up' and serve again in prison any time that he has served upon parole.

We think that this arrangement serves the sense of justice which offenders share with other men and that it is, therefore, desirable in itself and a constructive influence upon correction." [Vol. II. *Final Report of the New Jersey Criminal Law Revision Commission*, p. 322.]

The legislature adopted that recommendation and N.J.S.A. 2C:43-9(b)* provides:

If an offender is recommitted upon revocation of his parole, the term of further imprisonment upon such recommitment and of any subsequent reparole or recommitment under the same sentence shall be fixed by the parole board *but shall not exceed the original sentence* determined from the date of conviction. [Emphasis added.]

Consequently, it is clear that the maximum expiration date of a sentence may not be extended. The forfeiture of "street time" upon the revocation of an offender's parole would no longer be permissible.

With regard to the question concerning fine payments, the Parole Board is authorized by N.J.S.A. 30:4-123.15 to release an inmate on parole upon condition that any fine imposed on such inmate be paid through the probation office of the county of commitment in amounts to be fixed by the Parole Board. The failure of an inmate to pay such a fine in the manner directed by the Board would be sufficient cause for the revocation of parole.

* N.J.S.A. 2C:43-9(c) was redesignated as N.J.S.A. 2C:43-9(b) by the Amendments to the Code approved on August 29, 1979. L. 1979, c. 178.

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The Code also deals with the imposition and collection of fines. In those instances where an individual is delinquent in the payment of his fine, N.J.S.A. 2C:46-2(a) provides in pertinent part:

When a defendant sentenced to pay a fine or make restitution defaults in the payment thereof or of any installment, the court, upon the motion of the person authorized by law to collect the fine or restitution, the motion of the prosecutor or upon its own motion, may recall him, or issue a summons or a warrant of arrest for his appearance. After a hearing, the court may reduce the fine or restitution, suspend it, or modify the payment or installment plan, or, if none of these alternatives is warranted, may impose a term of imprisonment to achieve the objective of the sentence. The term of imprisonment in such case shall be specified in the order of commitment.

Thus, a court is empowered to impose one of several alternatives, including imprisonment, on an individual for his failure to pay a fine. In light of this authority of a sentencing court, your inquiry is whether the Board's authority derived from N.J.S.A. 30:4-123.15 to revoke parole for the failure to pay a fine has been repealed by the Criminal Code. It is our opinion that the Board retains its authority in this area.

It is clear that the express terms of N.J.S.A. 2C:46-2 do not prohibit the Parole Board from exercising its authority to revoke the parole of a parolee who is delinquent in the payment of a fine. To construe N.J.S.A. 2C:46-2 to do so would suggest that the mechanism for the revocation of parole set forth in N.J.S.A. 30:4-123.15 has been impliedly repealed by the Criminal Code. In establishing the underlying legislative intent, repeals by implication are not favored. In the absence of an express repealer, there must be a clear showing of a legislative purpose to effect a repeal. *New Jersey State P.B.A. v. Morristown*, 65 N.J. 160, 164 (1974). A review of the legislative history reveals a Criminal Law Revision Commission recommendation that the payment of a fine should be a matter for the sentencing court and not for the parole authority. Vol. II, *Final Report*, *supra*, at 351. It further stated that N.J.S.A. 30:4-123.15 be expressly repealed. This recommendation was not accepted by the legislature and the authority of the Parole Board to revoke parole for the failure to pay a fine has been left intact.

In addition, although both N.J.S.A. 30:4-123.15 and N.J.S.A. 2C:46-2 are designed to insure that fines be paid, the legislative purposes behind the enforcement mechanism set forth in those statutes are quite different. A sentencing court under N.J.S.A. 2C:46-2 is given broad authority to supervise an offender in order to insure compliance with its sentence. The Parole Board is charged with the responsibility to revoke parole in those cases where a parolee has given evidence by his conduct that he is unfit to be further at liberty. N.J.S.A. 30:4-123.23. In appropriate cases the failure of a parolee to pay a fine in the manner directed by the Parole Board shall constitute sufficient cause for revocation of parole. N.J.S.A. 30:4-123.15 and N.J.S.A. 2C:46-2 therefore have distinct and independent legislative objectives. We cannot assume therefore that the legislature by

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its enactment of the Code intended to modify the existing authority of the Parole Board to revoke parole for the failure to pay a fine.

In conclusion, you are advised that the Code of Criminal Justice prohibits the forfeiture of "street time" in cases of parole revocation. You are further advised that the Parole Board continues to retain the authority to revoke parole in appropriate cases where a parolee fails to make fine payments in the manner directed by the Board.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

October 11, 1979

JOHN A. WADDINGTON, *Director*
Division of Motor Vehicles
25 South Montgomery Street
Trenton, New Jersey

FORMAL OPINION NO. 22—1979

Dear Director Waddington:

You have asked whether certain Division of Motor Vehicles license suspension proceedings should be conducted by administrative law judges under the Administrative Procedure Act. You have also asked whether the Division may conduct "pre-hearing conferences" in certain cases in order to attempt to resolve them informally with the consent of the parties prior to formal hearing. For the following reasons, it is our opinion that both of these questions should be answered in the affirmative.

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It is essential to identify the specific type of case to which you refer. Such a case arises when the Division is notified by a court that a motorist has been convicted of a traffic violation or other violation of the Motor Vehicle Code (N.J.S.A. 39:1-1 *et seq.*). Pursuant to N.J.S.A. 39:5-30,¹ the Director has the authority to sanction the offending motorist; with possible sanctions including probation, warning, driver improvement school, and suspension. Notice of proposed suspension is sent to the motorist and a

1. Point system suspensions pursuant to N.J.S.A. 39:5-30.3 also fall within this general category. The point system functions by assigning a specific number of points for each conviction of a traffic violation as set forth in N.J.A.C. 13:19-10.1 *et seq.* When a motorist accumulates 12 or more points within a three-year period, suspension is proposed. Credits are available in particular circumstances, e.g., three credits for each 12-month period of violation-free driving, etc.