

**TITLE 22 COURTS**  
**CHAPTER 510 PAROLE**  
**PART 17 PAROLE HEARINGS FOR YOUTH SENTENCED IN ADULT COURT**

**22.510.17.1 ISSUING AGENCY:** New Mexico Parole Board.  
[22.510.17.1 NMAC – N, 3/9/2021]

**22.510.17.2 SCOPE:** The provisions of Part 17 apply to persons serving indeterminate life sentences for crimes committed when under the age of 18 and sentenced on or after July 1, 1979.  
[22.510.17.2 NMAC – N, 3/9/2021]

**22.510.17.3 STATUTORY AUTHORITY:** Paragraph 8 of Subsection B of Section 31-21-25 NMSA 1978.  
[22.510.17.3 NMAC – N, 3/9/2021]

**22.510.17.4 DURATION:** Permanent.  
[22.510.17.4 NMAC – N, 3/9/2021]

**22.510.17.5 EFFECTIVE DATE:** March 9, 2021, unless a later date is cited at the end of a section.  
[22.510.17.5 NMAC – N, 3/9/2021]

**22.510.17.6 OBJECTIVE:** In accordance with the prohibition on cruel and unusual punishment of the Eighth Amendment of the U.S. Constitution and Article II, Section 13 of the New Mexico Constitution and the rehabilitative purposes of the New Mexico Children’s Code, the parole board is responsible for providing an inmate sentenced for offenses committed under the age of 18 with a meaningful opportunity for release. Because of the unique constitutional requirements announced in supreme court precedent, the parole board must treat cases involving youthful offenders differently than those involving adult offenders.  
[22.510.17.6 NMAC – N, 3/9/2021]

**22.510.17.7 DEFINITIONS:**

**A. “Aggravating factor”**—a circumstance or factor the parole board is permitted or required to weigh against the grant of parole. *See also* mitigating factor.

**B. “Deadly weapon”**— as defined in Section 31-1-12 NMSA 1978, a deadly weapon means any firearm, whether loaded or unloaded; or any weapon which is capable of producing death or great bodily harm, including but not restricted to any types of daggers, brass knuckles, switchblade knives, bowie knives, poniards, butcher knives, dirk knives and all such weapons with which dangerous cuts can be given, or with which dangerous thrusts can be inflicted, including sword, canes, and any kind of sharp pointed canes, also slingshots, slung shots, bludgeons; or any other weapons with which dangerous wounds can be inflicted.

**C. “Experts”**— an expert permitted to submit evidence in support of release under Subsection D of 22.510.17.8 is limited to those psychologists, psychiatrists, social workers, and other licensed professionals in adolescent brain development who have conducted an individual evaluation of the inmate for purposes of parole review under the provisions of this rule.

**D. “Family member of the victim”**— as defined in Section 31-21-25 NMSA 1978, “family member of the victim” is a mother, father, sister, brother, child or spouse of the victim or a person who has custody of the victim.

**E. “Habitual offender”**— as defined in Section 31-18-17 NMSA 1978, a habitual offender is a person convicted of a noncapital felony in this state whether within the Criminal Code or the Controlled Substances Act or not who has incurred one prior felony conviction that was part of a separate transaction or occurrence or conditional discharge under Section 31-20-13 NMSA 1978.

**F. “Mitigating factor”**— a circumstance or factor the Parole Board is permitted or required to weigh in favor of the grant of parole. *See also* aggravating factor.  
[22.510.17.7 NMAC – N, 3/9/2021]

**22.510.17.8 PRESENTATION AND CONSIDERATION OF YOUTHFUL CHARACTERISTICS:**

The parole board shall consider the following mitigating factors for inmates sentenced for crimes committed before the age of 18:

- A.** The age and life circumstances of the inmate as of the date of the commission of the crime(s), including, but not limited to, diminished understanding of risks and consequences, diminished ability to resist peer pressure, and diminished ability to control surroundings;
  - (1) The hallmark features of youth at the time of the commission of the crime(s), including, but not limited to, diminished understanding of risks and consequences, diminished ability to resist peer pressure, and diminished ability to control surroundings;
  - (2) Whether the inmate has demonstrated growth and increased maturity since the date of the commission of the crime(s);
  - (3) The inmate's contributions to the welfare of other persons through service while incarcerated;
  - (4) When appropriate, the inmate's efforts to overcome substance abuse, addiction, or trauma;
  - (5) Lack of education or obstacles that the inmate may have faced as an adolescent in the adult correctional system;
  - (6) The inmate's opportunities for, or lack thereof, rehabilitation services in the correctional system, including, but not limited to, mental health services, counseling, educational programs, and vocational training; and
  - (7) The overall degree of the inmate's rehabilitation considering the inmate's age and life circumstances at the time of the crime, the nature and circumstances of the inmate's involvement in the crime(s), and the inmate's opportunities for rehabilitation while incarcerated.

**B.** An inmate shall be allowed to present, and the parole board shall consider, evidence of the inmate's youthful characteristics prior to the crime(s) and during incarceration in the form of paper, photographic, and electronic records, expert reports, and written statements.

**C.** Individuals, including, but not limited to, family members, friends, school and vocational personnel, faith leaders, teachers, correctional officials, and representatives from community-based organizations with knowledge about relevant evidence about the inmate may submit statements to the parole board as mitigating evidence of the inmate's maturity and life circumstances prior to the crime and/or as mitigating evidence of the inmate's growth and maturity since the time of the offense.

**D.** Experts in adolescent development, brain science, trauma, mental and physical health, and other relevant areas of expertise may present to the parole board on reports, affidavits, or other written statements to the parole board submitted as mitigating evidence. To qualify for consideration by the parole board, expert reports must address the inmate's particular circumstances and be based on an individual evaluation of the inmate.

**E.** Institutional infractions received prior to age 25 shall not be weighed against the inmate when determining whether to grant or deny parole.

[22.510.17.8 NMAC – N, 3/9/2021]

#### **22.510.17.9 GRANT OF PAROLE AND INCORPORATION OF SECTION 31-21-10 NMSA 1978:**

**A.** Where credible evidence of rehabilitation, growth, and maturity is present, a presumption of fitness for parole shall be applied. In applying this presumption, the parole board shall abide by the statutory requirements under Section 31-21-10 NMSA 1978, for granting parole of an inmate sentenced to life imprisonment. In accordance with Section 31-21-10 NMSA 1978, before granting parole, the parole board shall also consider:

- (1) The circumstances of the offense;
- (2) Mitigating and aggravating circumstances;
- (3) Whether a deadly weapon was used in the commission of the offense;
- (4) Whether the inmate is a habitual offender;
- (5) The reports filed under Section 31-21-9 NMSA 1978; and
- (6) The reports of such physical and mental examinations as have been made while in an

institution.

**B.** In accordance with Section 31-21-10 NMSA 1978, in support of a grant of parole, the parole board shall also:

- (1) Make a finding that parole is in the best interest of society and the inmate; and
- (2) Make a finding that the inmate is able and willing to fulfill the obligations of a law-

abiding citizen.

[22.510.17.9 NMAC – N, 3/9/2021]

**22.510.17.10 RIGHTS OF CRIME VICTIMS AND INCORPORATION OF SECTION 31-21-25 NMSA 1978:**

The parole board shall allow the victim of the offender's crime or a family member of the victim to be present during the parole hearing. If the victim or a family member of the victim requests an opportunity to speak to the parole board during the hearing in public or private, the parole board shall grant the request.

[22.510.17.10 NMAC – N, 3/9/2021]

**22.510.17.11 DENIAL OF PAROLE:**

**A.** Where credible evidence of rehabilitation, growth, and maturity is present, a presumption of fitness for parole shall be applied. The focus of the parole board's determination should be on the credible evidence provided by the inmate demonstrating rehabilitation, growth, and maturity. Denial of parole is permitted if the parole board determines there is insufficient evidence of rehabilitation, growth, and maturity. The parole board shall articulate the basis of its decision in writing if release is denied. The written denial shall include, but is not limited to:

(1) The specific reason(s) why release is not in the best interest of society and the inmate;  
and

(2) An analysis of the characteristics of youth as outlined in 22.510.17.8.

**B.** In accordance with Subsection A of Section 31-21-10 NMSA 1978, if release is denied, the inmate shall be eligible for a subsequent parole review after two years from the date of the most recent denial.

[22.510.17.11 NMAC – N, 3/9/2021]

**22.510.17.12 LEGAL COUNSEL AND DEFENSE PROFESSIONALS:**

**A.** Inmates appearing before the parole board sentenced to indeterminate life for an offense or offenses committed under the age of 18 shall have the right to retain counsel for representation before the parole board. Counsel shall be permitted to participate in the hearing, argue the application of the provisions of this rule in the case of their client, and submit to the members of the parole board memorandum of this proposed application and supporting evidence.

**B.** The parole board shall have the right to have legal counsel of its own present at the hearing.

**C.** Social workers and other defense professionals also engaged in the representation of the inmate before the parole board shall be permitted to submit reports, affidavits, or other written or testamentary statements to the parole board as mitigating evidence.

[22.510.17.12 NMAC – N, 3/9/2021]

**22.510.17.13 NOTICE:**

**A.** Inmates will be provided a minimum of 30 days' notice of the date and time of their hearing under this rule.

**B.** Inmates will be informed of the parole board's decision within 30 days from the date of the hearing.

[22.510.17.13 NMAC – N, 3/9/2021]

**22.510.17.14 PRESERVATION OF RECORD:**

Parole hearings will be tape recorded and kept by the parole board. A recording of the hearing will be made available to anyone upon written request to the parole board and sent within 14 days of the request.

[22.510.17.14 NMAC – N, 3/9/2021]

**History of 22.510.17 NMAC: [RESERVED]**