

TITLE 22 COURTS
CHAPTER 510 PAROLE
PART 3 POLICY STATEMENT PERTAINING TO THE GRANTING OF PAROLE, DENIAL OF PAROLE, REVOCATION OR RESCISSION OF PAROLE AND TO THE DISCHARGE OF PAROLEE

22.510.3.1 ISSUING AGENCY: New Mexico Parole Board.
[22.510.3.1 NMAC – Rp, 22.510.3.1 NMAC, 3/9/2021]

22.510.3.2 SCOPE: The provisions of Part 3 apply to persons subject to the granting of parole, denial of parole, revocation or rescission of parole and to the discharge of parole.
[22.510.3.2 NMAC – Rp, 22.510.3.2 NMAC, 3/9/2021]

22.510.3.3 STATUTORY AUTHORITY: Paragraph 8 of Subsection B of Section 31-21-25 NMSA 1978.
[22.510.3.3 NMAC – Rp, 22.510.3.3 NMAC 3/9/2021]

22.510.3.4 DURATION: [Permanent]
[22.510.3.4 NMAC – Rp, 22.510.3.4 NMAC, 3/9/2021]

22.510.3.5 EFFECTIVE DATE: March 9, 2021, unless a later date is cited at the end of a section.
[22.510.3.5 NMAC – Rp, 22.510.3.5 NMAC, 3/9/2021]

22.510.3.6 OBJECTIVE: To qualify the application of Subsection A of 22.510.3.8 and its exclusion of persons serving indeterminate life sentences who were under the age of eighteen (18) at the time their crime was committed, which relates to the enactment of 22.510.17.
[22.510.3.6 NMAC – Rp, 22.510.3.6 NMAC, 3/9/2021]

22.510.3.7 DEFINITIONS: [RESERVED]
[22.510.3.7 NMAC – Rp, 22.510.3.7 NMAC, 3/9/2021]

22.510.3.8 POLICY STATEMENT PERTAINING TO THE GRANTING OF PAROLE, DENIAL OF PAROLE, REVOCATION OR RESCISSION OF PAROLE AND TO THE DISCHARGE OF PAROLEE:

A. The provisions of Subsection A of 22.510.3.8 NMAC apply to persons serving determinate sentences for crimes committed on or after July 1, 1979, except for persons serving indeterminate life sentences for crimes committed on or after July 1, 1979.

(1) Before release of an individual in this category, the board shall furnish to each inmate, as a prerequisite to his release under its supervision, a written statement of the conditions of parole which will be accepted and agreed to by the inmate as evidenced by his signature affixed to a duplicate copy to be retained in the files of the board. The board shall also require, as a prerequisite to release, the submission and approval of a parole plan which shall include, unless waived by the board, evidence of having secured gainful employment or satisfactory evidence of self support.

(2) In setting conditions of parole and in approving a parole plan for the inmate, the following factors will be considered by the board:

(a) the inmate's employment history and his occupational skills and training, both civilian and/or military, and any skills he may have attained while in the corrections system;

(b) the inmate's plans, including proposed residence, proposed employment and other intended pursuits when released;

(c) the inmate's past use of narcotics, other controlled substances or excessive use of alcohol;

(d) any pre-sentence or pre-release investigative reports prepared in with accordance with Section 31-21-9 NMSA 1978;

(e) the inmate's criminal record, including parole and probation history;

(f) reports of physical and mental examinations as have been made, conclusions and

recommendations made therein;

- (g) whether the inmate should be paroled for hospitalization/treatment;
- (h) the inmate's institutional record;
- (i) the availability of community resources to assist the inmate when paroled;
- (j) whether or not parole costs are required to be included as a parole condition for a crime committed on or after June 19, 1981, and the amount thereof;
- (k) whether or not victim restitution has been ordered by the court with accordance with Section 31-17-1 NMSA 1978;
- (l) any other factor which is deemed relevant by the board in a particular case.

B. The provisions of Subsection B of 22.510.3.8 NMAC apply to persons serving indeterminate life sentences for crimes committed on or after July 1, 1979. Before ordering the parole of an inmate sentenced to life imprisonment in this category, the board shall:

- (1) interview the inmate at the institution where he is committed;
- (2) consider all pertinent information concerning the inmate including:
 - (a) the circumstances of the offense;
 - (b) mitigating and aggravating circumstances;
 - (c) whether a deadly weapon was used in the commission of the offense;
 - (d) whether an inmate is a habitual offender;
 - (e) any pre-sentence or pre-release investigative reports filed under Section 31-21-9 NMSA 1978;
 - (f) the reports of such physical and mental examinations as have been made while in prison; the board may require mental examinations in appropriate cases;
- (3) make a determination that parole is in the best interest of society and the inmate;
- (4) make a determination that the inmate is able and willing to fulfill the obligations of a law abiding citizen.

C. The provisions of Subsection C of 22.510.3.8 NMAC apply to persons serving indeterminate sentences for crimes committed prior to July 1, 1979. Where appropriate, the provisions of this section also apply to persons serving indeterminate life sentences for crimes committed on or after July 1, 1979. In accordance with Section 31-21-25 NMSA 1978, the parole board hereby adopts a written policy specifying the criteria to be considered by the board in determining whether to grant, deny or revoke parole or to discharge a parolee from supervision.

- (1) With respect to the grant or denial of parole, the following criteria will be considered by the parole board in making a determination:
 - (a) whether the inmate has given evidence of having secured gainful employment or satisfactory evidence of self-support;
 - (b) whether the inmate can be released without detriment to himself or to the community;
 - (c) whether the inmate is able and willing to fulfill the obligations of a law-abiding citizen;
 - (d) criteria (a), (b) and (c) of this paragraph must be met in order for an inmate to be paroled to the community.
- (2) In determining whether criteria (a), (b) and (c)] have been met, the following factors will be considered by the board:
 - (a) the inmate's ability and readiness to assume the obligations and responsibilities provided in the parole certificate;
 - (b) the degree to which the inmate has close ties to family and friends;
 - (c) the degree to which the type of residence or community in which the inmate plans to live is conducive to good behavior while on parole;
 - (d) the inmate's employment history and his occupational skills and training, both civilian and/or military, and any skills he may have attained while in the custody of the corrections department;
 - (e) the inmate's plans, including residence, employment and other intended pursuits if released;
 - (f) the inmate's past use of narcotics or excessive use of alcohol;
 - (g) any recommendation made by the sentencing court, district attorneys, law enforcement agencies, and probation and parole officers;
 - (h) the inmate's conduct during his term of imprisonment;

(i) any pre-sentence or pre-release investigative reports prepared in accordance with Section 31-21-9 NMSA 1978;

(j) the inmate's criminal record;

(k) reports of physical and mental examinations as have been made, and conclusions and recommendations made therein; the board may require mental examinations in appropriate cases;

(l) the inmate's behavior and attitude during confinement;

(m) the inmate's behavior and attitude while on probation or parole from any other sentence and the recentness of such probation or parole;

(n) the availability of community resources to assist the inmate if paroled;

(o) the circumstances of the offense of which the inmate was convicted and sentenced;

(p) any recommendations or comments filed with the board regarding the inmate's suitability for parole;

(q) the inmate's previous social history, including his reputation in his home community;

(r) the inmate's positive efforts on behalf of others;

(s) the inmate's culture, language, values, mores, judgments, communicative ability and other unique qualities;

(t) whether or not victim restitution has been ordered by the court;

(u) whether or not parole costs are required to be included as a parole condition for a crime committed on or after June 19, 1981, and the amount thereof;

(v) any other relevant factor deemed appropriate by the parole board in any particular case.

D. The provisions of Subsection D of 22.520.3.8 NMAC apply to inmates serving indeterminate sentences for crimes committed prior to July 1, 1979, and to persons serving indeterminate life sentences for crimes committed on or after July 1, 1979. With respect to the parole of an inmate in this category to a detainer or to a consecutive sentence, the following criteria will be considered by the board in making a determination:

- (1) The inmate must sufficiently demonstrate the attitude that he could, if released to the community, be able and willing to be a law-abiding citizen.
- (2) The inmate must sufficiently demonstrate the attitude that, if he were released to the community, he would not be a detriment to himself or to the community.
- (3) The parole of an inmate to a detainer or to a consecutive sentence must be in the best interest of the applicant and society.

E. The provisions of Subsection E of 22.510.3.8 NMAC apply to all applicants for parole. With respect to the parole of an inmate for hospitalization, the following criteria will be considered by the board in making a determination:

- (1) It must appear that the inmate needs and will benefit from physical or mental treatment.
- (2) It must appear that such treatment, if successful, would probably render the inmate a suitable candidate for parole to the community.

F. The provisions of Subsection F of 22.510.3.8 NMAC apply to all persons facing possible parole revocation. With respect to the revocation of parole, the following criteria apply:

- (1) whether the parolee has violated a condition of parole. Whether the violation or violations of one or more conditions of parole demonstrate a disregard of or careless attitude towards the conditions of parole; whether the parolee, whose violation of parole is established, should be recommitted to the custody of the corrections department or should other steps be taken to protect society and improve chances of rehabilitation;
- (2) if the violation is sufficiently justified by the parolee, the board may continue parole or may enter any other order it deems appropriate;
- (3) if the violation is not established, the parolee will be reinstated on parole;
- (4) when a parolee has been returned to a correctional facility of the corrections department, bail or bond release cannot be accomplished by the parole board during final parole revocation hearing;
- (5) an electronic recording will be made of all violation hearings.

G. The provisions of Subsection G of 22.510.3.8 NMAC apply to persons serving determinate sentences for crimes committed on or after July 1, 1979. With respect to the criteria to be considered by the board in determining whether to discharge a parolee, the following will be considered: persons serving determinate sentences will be discharged upon completion of the mandatory parole period and a certificate of parole discharge will be issued.

H. The provisions of Subsection H of 22.510.3.8 NMAC] apply to persons serving indeterminate sentences for crimes committed prior to July 1, 1979, and to persons serving indeterminate life sentences for crimes committed on or after July 1, 1979. With respect to the criteria to be considered by the board in determining whether to discharge a parolee, the following will be considered:

(1) Upon recommendation by field services division, a parolee who has performed the obligations of his release for such time as will satisfy the board that his final release is not incompatible with his welfare and that of society, the board will, consistent with Paragraphs (2) and (3) below, make final order of parole discharge to the parolee.

(2) For persons sentenced for crimes committed prior to July 1, 1979, no such order of discharge will be made in any case within a period of less than one year after the date of parole release, except where the sentence expires prior thereto.

(3) For persons serving life sentences for crimes committed on or after July 1, 1979, no such order of discharge shall be made in any case until after the parolee has served at least five years on parole. [22.510.3.8 NMAC – Rp & A, 22.510.3.8 NMAC, 3/9/2021]

HISTORY OF 22.510.3 NMAC:

Pre-NMAC History: Material in this part was derived from that previously filed with the State Records Center: PB 71-1, Parole Hearing Board, Procedures Manual, filed 11/17/1971.

PB 76-1, Rules, Regulations, Procedures and Parole Board Statutes, filed 8/2/1976.

PB 80-1, Rules, Regulations, Procedures and Parole Board Statutes (February 1979 Revision), filed 10/17/1980.

PB Rule 82-2, Policy Statement Pertaining to the Granting of Parole, Denial of Parole, Revocation or Rescission of Parole and to the Discharge of Parolee, filed 12/2/1982.

22.510.3 NMAC - Policy Statement Pertaining to the Granting of Parole, Denial of Parole, Revocation or Rescission of Parole and to the Discharge of Parolee, filed 12/2/1982, was repealed and replaced by 22.510.3 NMAC - Policy Statement Pertaining to the Granting of Parole, Denial of Parole, Revocation or Rescission of Parole and to the Discharge of Parolee, effective 3/9/2021.

History of Repealed Material:

22.510.3 NMAC - Policy Statement Pertaining to the Granting of Parole, Denial of Parole, Revocation or Rescission of Parole and to the Discharge of Parolee, filed 12/2/1982, was repealed and replaced by 22.510.3 NMAC - Policy Statement Pertaining to the Granting of Parole, Denial of Parole, Revocation or Rescission of Parole and to the Discharge of Parolee, effective 3/9/2021.