

NOTICE OF PROPOSED RULEMAKING

Public Hearing. The New Mexico Parole Board gives notice that it will conduct a public rule hearing from 9 a.m. to 12 p.m. on Tuesday, December 29, 2020 via Zoom (link: <https://zoom.us/j/96940735853?pwd=WVovMlpHVXI3Y0Y1MTlodTRObGxWdz09>) due to concerns surrounding COVID-19 and in accordance with Governor Michelle Lujan-Grisham's Executive Order 2020-004, Declaration of a Public Health Emergency, and the Public Health Emergency Order to Limit Mass Gatherings due to COVID-19. Continuous updates on hearing changes and Zoom information will be provided on the Parole Board's website. The purpose of the public hearing is to receive public input on the proposed new rules, 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, and 22.510.17 NMAC, Parole Hearings for Youth Sentenced in Adult Court. At the hearing, the Parole Board will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement concerning the rule changes. Written comment will be accepted via mail, email or fax until 5 p.m. MDT on December 29, 2020.

Explanation of Purpose and Summary of Text

The purpose of repealing and replacing Subsection B of **22.510.3.8 NMAC, Policy Statement Pertaining to the Granting of Parole, Denial of Parole, Revocation or Rescission of Parole, and to the Discharge of Parolee**, is to qualify the application of Paragraph II and to explain that it excludes persons serving indeterminate life sentences who were under the age of eighteen (18) at the time their crime was committed. Further, the rule introduces the proposed new rule, 22.510.17, Parole Hearings for Youth Sentenced in Adult Court. The purpose of repealing and replacing the remainder of 22.510.3 NMAC is to update formatting of the rule to conform to current Commission of Public Records requirements.

The purpose of the proposed new rule **22.5.10.17, Parole Hearings for Youth Sentenced in Adult Court**, is to establish the procedures and processes the Parole Board must follow regarding parole determinations involving persons serving indeterminate life sentences who were under the age of eighteen (18) at the time their crime was committed. The rule is designed to ensure compliance with federal and state law while maintaining the Parole Board's continuing commitment to public safety and crime victim input in all proceedings. Under recent Supreme Court precedent, state parole boards must modify their proceedings for those serving adult sentences for crimes committed when they were under eighteen (18) to ensure that such persons have a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." In accordance with this precedent, the rule outlines specific considerations the Parole Board must make regarding a person's youth at the time of the offense, as well as rehabilitative efforts the inmate has made during their incarceration. In furtherance of this precedent, the rule expands procedural safeguards to this limited class of offenders, including access to counsel and adequate notice. The rule does not change the timing of eligibility for parole from an indeterminate life sentence, which remains at thirty (30) years (*see* NMSA 1978, Section 31-21-10). The rule provides a definitions list for both unique and frequently used terms throughout the rule, such as "aggravating factor," "mitigating factor," and "experts." Additionally, pursuant to NMSA 1978, Section 31-21-25, the rule protects the rights of crime victims to be present and participate in all parole hearings. The rule will impact a narrow class of offenders within the New Mexico Corrections Department. At the time of the initiation of this rulemaking process, twenty-seven (27) people are serving indeterminate life sentences for crimes committed when they were under the age of eighteen (18). Of those, two (2) are currently eligible for parole.

Statutory Authorization(s):

Paragraph (8) of Subsection B of Section 31-21-25 NMSA 1978.

Technical information used as a basis for the proposed rule(s) may be found on the Parole Board's website at <https://cd.nm.gov/divisions/parole-board/>.

Public Comment. Interested parties may provide comment at the public hearing or may submit written comments by mail to Cisco McSorley, New Mexico Parole Board, 45 Penitentiary Road, Santa Fe, N.M., 87508, by email to cisco.mcsorley@state.nm.us, or by fax to (505) 827-8380. All written comments must be received no later than 5 p.m. (MDT) on Tuesday, December 29, 2020. The Parole Board encourages the early submission of written comments. The public comment period is from November 24, 2020, to 5 p.m. MDT on December 29, 2020.

The Parole Board will review all feedback received during the public comment period and issue communication regarding a final decision at a later date.

Copies of the repealed rule and proposed new rule may be accessed on the Parole Board's website at <https://cd.nm.gov/divisions/parole-board/>, or may be obtained from Cisco McSorley at (505) 827-8825 during regular business hours.

Individuals with disabilities who require the above information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Cisco McSorley at (505) 827-8825 as soon as possible before the date set for the public hearing. The Parole Board requires at least ten (10) days' advance notice to provide any special accommodations requested.