

30: 4- 123.49 et al

LEGISLATIVE HISTORY CHECKLIST

(Prisoners--Equitable parole rules)

NJSA 30:4-123.49 et al

LAWS 1982

CHAPTER 71

Bill No. A1724

Sponsor(s) D. Gallo

Date Introduced July 1, 1982

Committee: Assembly

Senate Institutions, Health & Welfare

Amended during passage ~~Yes~~

No Substituted for S1458 (bill not attached since identical to A1724; Senate Committee statement to S1458 attached)

Date of Passage: Assembly July 8, 1982

Senate July 12, 1982

Date of approval July 16, 1982

Following statements are attached if available:

Sponsor statement Yes ~~No~~

Committee Statement: Assembly ~~Yes~~ No

Senate Yes ~~No~~

Fiscal Note ~~Yes~~ No

Veto Message ~~Yes~~ No

Message on signing Yes ~~No~~

Following were printed:

Reports Yes ~~No~~

Hearings Yes ~~No~~

Report, referred to in press release and upon which recommendations for this legislation are based:

- 974.90 New Jersey. Office of the Governor.
- P959 Prison overcrowding-a plan of action.
- 1982D April, 1982. Trenton. 1982

(over)

6/22/81

For background see:

974.90 New Jersey Legislature. Senate. Institutions. Health & Welfare Committee.
P959 Public hearing... on overcrowding in state prisons and county jails, held
1982 2-18-82. Trenton, 1982

974.90 New Jersey. Governor's Task Force on Prison Overcrowding.
P95^c Report... Dec. 3, 1981. Trenton, 1981
1981;

ASSEMBLY, No. 1724

STATE OF NEW JERSEY

INTRODUCED JULY 1, 1982

By Assemblyman D. GALLO

AN ACT concerning parole and amending and supplementing P. L. 1979, c. 441.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 5 of P. L. 1979, c. 441 (C. 30:4-123.49) is amended to
2 read as follows:

3 5. a. The chairman of the board, after consulting with the board,
4 shall assign any case not otherwise assigned, such as county jail,
5 workhouse, or penitentiary cases, to a **[board]** *special panel*
6 *composed of any two members or any one member and one senior*
7 *hearing officer* as necessary for the efficient functioning of the
8 board.

9 b. Nothing contained in this act shall be deemed to preclude a
10 member of any board panel from exercising all the functions,
11 powers, and duties of a hearing officer upon designation by the
12 chairman; provided, however, that no member so designated shall
13 participate in the disposition of a panel or board review of his
14 initial decision.

15 c. No hearing officer assigned to review adult cases shall be
16 assigned to review juvenile cases pursuant to sections 13 and 19
17 of this act, nor shall any hearing officer assigned to review juvenile
18 cases be assigned to review adult cases.

19 d. Representatives of the board or the chairman designated
20 pursuant to this act may include employees of the board and em-
21 ployees of other agencies such as the Department of Corrections,
22 provided that no employee of the Department of Corrections shall

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.
Matter printed in italics *thus* is new matter.

23 be so designated without the approval of the Commissioner of
24 Corrections. Such representatives shall not participate in the
25 disposition of parole cases.

1 2. Section 7 of P. L. 1979, c. 441 (C. 30:4-123.51) is amended
2 to read as follows:

3 7. a. Each adult inmate sentenced *to a term of incarceration in a*
4 *county penal institution, or to a specific term of years at the State*
5 *Prison or the correctional institution for women shall become*
6 *primarily eligible for parole after having served any judicial or*
7 *statutory mandatory minimum term, or one-third of the sentence*
8 *imposed where no mandatory minimum term has been imposed less*
9 *commutation time for good behavior pursuant to N. J. S. 2A:164-24*
10 *or R. S. 30:4-140 and credits for diligent application to work and*
11 *other institutional assignments pursuant to P. L. 1972, c. 115*
12 *(C. 30:8-28.1 et seq.) or R. S. 30:4-92. Consistent with the provi-*
13 *sions of the New Jersey Code of Criminal Justice (N. J. S. 2C:11-3,*
14 *2C:14-6, 2C:43-6, 2C:43-7), commutation and work credits shall*
15 *not in any way reduce any judicial or statutory mandatory mini-*
16 *imum term and such credits accrued shall only be awarded subse-*
17 *quent to the expiration of the term.*

18 b. Each adult inmate sentenced to a term of life imprisonment
19 shall become primarily eligible for parole after having served
20 any judicial or statutory mandatory minimum term, of 25 years
21 where no mandatory minimum term has been imposed less com-
22 mutation time for good behavior and credits for diligent application
23 to work and other institutional assignments. If an inmate sentenced
24 to a specific term or terms of years is eligible for parole on a date
25 later than the date upon which he would be eligible if a life sentence
26 had been imposed, then in such case the inmate shall be eligible
27 for parole after having served 25 years, less commutation time for
28 good behavior and credits for diligent application to work and
29 other institutional assignments. Consistent with the provisions of
30 the New Jersey Code of Criminal Justice (N. J. S. 2C:11-3, 2C:14-6,
31 2C:43-6, 2C:43-7), commutation and work credits shall not in any
32 way reduce any judicial or statutory mandatory minimum term
33 and such credits accrued shall only be awarded subsequent to the
34 expiration of the term.

35 c. Each inmate sentenced to a specific term of years pursuant
36 to the "Controlled Dangerous Substances Act," P. L. 1970, c. 226
37 (C. 24:21-1 through 45) shall become primarily eligible for parole
38 after having served one-third of the sentence imposed less com-
39 mutation time for good behavior and credits for diligent application
40 to work and other institutional assignments.

41 d. Each adult inmate sentenced to an indeterminate term of
42 years as a young adult offender pursuant to N. J. S. 2C:43-5 shall
43 become primarily eligible for parole consideration pursuant to a
44 schedule of primary eligibility dates developed by the board, less
45 adjustment for program participation. In no case shall the board
46 schedule require that the primary parole eligibility date for a
47 young adult offender be greater than the primary parole eligibility
48 date required pursuant to this section for the presumptive term
49 for the crime authorized pursuant to N. J. S. 2C:44-1(f).

50 e. Each adult inmate sentenced to the Adult Diagnostic and
51 Treatment Center, Avenel, shall become primarily eligible for
52 parole upon recommendation by the special classification review
53 board pursuant to N. J. S. 2C:47-5, except that no such inmate
54 shall become primarily eligible prior to the expiration of any
55 mandatory or fixed minimum term imposed pursuant to N. J. S.
56 2C:14-6.

57 f. Each juvenile inmate committed to an indeterminate term
58 shall be immediately eligible for parole.

59 g. Each adult inmate of a county jail, workhouse or penitentiary
60 shall become primarily eligible for parole upon service of [a full
61 9 months] *60 days* of his aggregate sentence *or as provided for in*
62 *subsection a. of this section, whichever is greater. Whenever any*
63 *such inmate's parole eligibility is within six months of the date*
64 *of such sentence, the judge shall state such eligibility on the record*
65 *which shall satisfy all public and inmate notice requirements. The*
66 *chief executive officer of the institution in which county inmates are*
67 *held shall generate all reports pursuant to subsection d. of section*
68 *10 of P. L. 1979, c. 441 (C. 30:4-123.54). The parole board shall have*
69 *the authority to promulgate time periods applicable to the parole*
70 *processing of inmates of county penal institutions, except that no*
71 *inmate may be released prior to the primary eligibility date esta-*
72 *blished by this subsection, unless consented to by the sentencing*
73 *judge. No inmate sentenced to a specific term of years at the State*
74 *Prison or the correctional institution for women shall become*
75 *primarily eligible for parole until service of a full nine months*
76 *of his aggregate sentence.*

77 h. When an inmate is sentenced to more than one term of im-
78 prisonment, the primary parole eligibility terms calculated pur-
79 suant to this section shall be aggregated by the board for the
80 purpose of determining the primary parole eligibility date, except
81 that no juvenile commitment shall be aggregated with any adult
82 sentence. The board shall promulgate rules and regulations to
83 govern aggregation under this subsection.

84 i. The primary eligibility date shall be computed by a designated
85 representative of the board and made known to the inmate in
86 writing not later than 90 days following the commencement of the
87 sentence. *In the case of an inmate sentenced to a county penal*
88 *institution such notice shall be made pursuant to subsection g. of*
89 *this section.* Each inmate shall be given the opportunity to acknowl-
90 edge in writing the receipt of such commutation. Failure or
91 refusal by the inmate to acknowledge the receipt of such computa-
92 tion shall be recorded by the board but shall not constitute a
93 violation of this subsection.

94 j. Except as provided in this subsection, each inmate sentenced
95 pursuant to N. J. S. 2A:113-4 for a term of life imprisonment,
96 N. J. S. 2A:164-17 for a fixed minimum and maximum term or
97 N. J. S. 2C:1-1(b) shall not be primarily eligible for parole on a
98 date computed pursuant to this section, but shall be primarily eligi-
99 ble on a date computed pursuant to P. L. 1948, c. 84 (C. 30:4-123.1
100 et seq.), which is continued in effect for this purpose. Inmates
101 classified as second, third or fourth offenders pursuant to section
102 12 of P. L. 1948, c. 84 (C. 30:4-123.12) shall become primarily
103 eligible for parole after serving one-third, one-half or two-thirds
104 of the maximum sentence imposed, respectively, less in each in-
105 stance commutation time for good behavior and credits for diligent
106 application to work and other institutional assignments; provided,
107 however, that if the prosecuting attorney or the sentencing court
108 advises the board that the punitive aspects of the sentence imposed
109 on such inmates will not have been fulfilled by the time of parole
110 eligibility calculated pursuant to this subsection, then the inmate
111 shall not become primarily eligible for parole until serving an
112 additional period which shall be one-half of the difference between
113 the primary parole eligibility date calculated pursuant to this
114 subsection and the parole eligibility date calculated pursuant to
115 section 12 of P. L. 1948, c. 84 (C. 30:4-123.12). If the prosecuting
116 attorney or the sentencing court advises the board that the punitive
117 aspects of the sentence have not been fulfilled, such advice need not
118 be supported by reasons and will be deemed conclusive and final.
119 Any such decision shall not be subject to judicial review except to
120 the extent mandated by the New Jersey and United States Con-
121 stitutions. The board shall, reasonably prior to considering any
122 such case, advise the prosecuting attorney and the sentencing court
123 of all information relevant to such inmates' parole eligibility.

1 3. Section 10 of P. L. 1979, c. 441 (C. 30:4-123.54) is amended
2 to read as follows:

3 10. a. At least 120 days but not more than 180 days prior to the

4 parole eligibility date of each adult inmate, a report concerning the
5 inmate shall be filed with the appropriate board panel, by the staff
6 members designated by the superintendent or other chief executive
7 officer of the institution in which the inmate is held.

8 b. The report filed pursuant to subsection a. shall contain pre-
9 incarceration records of the inmate, state the conduct of the inmate
10 during the current period of confinement, include a complete
11 report on the inmate's social, physical and mental condition,
12 include an investigation by the Bureau of Parole of the inmate's
13 parole plans, and present information bearing upon the likelihood
14 that the inmate will commit a crime under the laws of this State
15 if released on parole.

16 c. A copy of the report filed pursuant to subsection b. of this
17 section, excepting those documents which have been classified as
18 confidential pursuant to rules and regulations of the board or the
19 Department of Corrections, shall be served on the inmate at the
20 time it is filed with the board panel. The inmate may file with the
21 board panel a written statement regarding the report, but shall
22 do so within 105 days prior to the primary parole eligibility date.

23 *d. Any provision of this section to the contrary notwithstanding,*
24 *the board shall by rule or regulation modify the scope of the*
25 *required reports and time periods for rendering such reports with*
26 *reference to county penal institutions.*

1 4. Section 11 of P. L. 1979, c. 441 (C. 30:4-123.55) is amended to
2 read as follows:

3 11. a. Prior to the parole eligibility date of each adult inmate,
4 a designated hearing officer shall review the reports required by
5 section 10 of this act, and shall determine whether there is a basis
6 for denial of parole in the preparole report or the inmate's state-
7 ment, or an indication, reduced to writing, that additional informa-
8 tion providing a basis for denial of parole would be developed or
9 produced at a hearing. If the hearing officer determines that there
10 is no basis in the preparole report or the inmate's statement for
11 denial of parole and that there is no additional relevant informa-
12 tion to be developed or produced at a hearing, he shall at least 60
13 days prior to the inmate's parole eligibility date recommend in
14 writing to the assigned member of the board panel that parole
15 release be granted.

16 b. If the assigned member of the board panel *or in the case of*
17 *an inmate sentenced to a county penal institution, the assigned*
18 *member* concurs in the hearing officer's recommendation, he shall
19 certify parole release pursuant to section 15 of this act as soon as
20 practicable after the eligibility date and so notify the inmate and

21 the board. *In the case of an inmate sentenced to a county penal*
 22 *institution the board shall certify parole release or deny parole as*
 23 *provided by this section, except with regard to time periods for*
 24 *notice and parole processing which are authorized by or otherwise*
 25 *adopted pursuant to subsection g. of section 7 of P. L. 1979, c. 441*
 26 *(C. 30:4-123.51g.). If the designated hearing officer does not*
 27 *recommend release on parole or if the assigned member does not*
 28 *concur in a recommendation of the designated hearing officer in*
 29 *favor of release, then the parole release of an inmate in a county*
 30 *penal institution shall be treated under the provisions of law*
 31 *otherwise applicable to an adult inmate. In the case of an inmate*
 32 *sentenced to a county penal institution, the performance of public*
 33 *service for the remainder of the term of the sentence shall be a*
 34 *required condition of parole, where appropriate.*

35 c. If the hearing officer or the assigned member determines that
 36 there is a basis for denial of parole, or that a hearing is otherwise
 37 necessary, the hearing officer or assigned member shall notify the
 38 appropriate board panel and the inmate in writing of his determi-
 39 nation, and of a date for a parole consideration hearing. Said
 40 hearing shall be conducted by the appropriate board panel at least
 41 30 days prior to the eligibility date. At the hearing, which shall
 42 be informal, the board panel shall receive as evidence any relevant
 43 and reliable documents or testimony. All such evidence not classi-
 44 fied as confidential pursuant to rules and regulations of the board
 45 or the Department of Corrections shall be disclosed to the inmate
 46 and the inmate shall be permitted to rebut such evidence and to
 47 prevent evidence on his own behalf. The decision of the board panel
 48 shall be based solely on the evidence presented at the hearing.

49 d. At the conclusion of the parole consideration hearing, the
 50 board panel shall either (1) certify the parole release of the inmate
 51 pursuant to section 15 of this act as soon as practicable after the
 52 eligibility date and so notify the inmate and the board, or (2) deny
 53 parole and file with the board within 30 days of the hearing a state-
 54 ment setting forth the decision, the particular reasons therefor,
 55 except information classified as confidential pursuant to rules and
 56 regulations of the board or the Department of Corrections, a copy
 57 of which statement shall be served upon the inmate together with
 58 notice of his right to appeal to the board.

59 e. Upon request by the hearing officer or the inmate, the time
 60 limitations contained in sections 10 and 11 may be waived by the
 61 appropriate board panel for good cause.

1 5. (New section) Pursuant to section 16 of P. L. 1979, c. 441
 2 (C. 30:4-123.60), any inmate sentenced to a term of incarceration

3 in a county penal institution who is granted parole and whose
4 parole is revoked, shall not be credited for any time served during
5 that parole and shall not be eligible for parole during the remainder
6 of that county sentence.

1 6. (New section) Notwithstanding any provisions of this act
2 to the contrary, in the case of any inmate sentenced to a term of
3 incarceration in a county penal institution prior to the effective
4 date of this act, the parole board shall notify the sentencing court
5 of the pending parole of the inmate and the court shall have 10 days
6 to deny that parole.

1 7. This act shall take effect immediately.

STATEMENT

Although technically the parole law applies to county jail prisoners, as a practical matter it does not for the reason that the law now mandates that no prisoner in a county jail is eligible for parole until nine months of the sentence has been served. This results in anomalous and unfair sentencing. A prisoner in a State correctional institution with a sentence of four years could be eligible for parole in about nine months, whereas a prisoner sentenced to nine months in a county jail would have to serve an amount of time equal to a State prisoner sentenced to a four year term. This bill establishes a minimum 60-day period during which county prisoners would be ineligible for parole and a modified parole procedure for county prisoners which differs somewhat from the procedure that applies to State prisoners. The intent of this bill, is to create an equitable parole eligibility rule with respect to both State and county prisoners and a result of this bill will be to decrease the sentenced population in county jails which represents approximately one-third of the total county jail population.

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A1724(1982)

SENATE INSTITUTIONS, HEALTH AND WELFARE
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 1724

STATE OF NEW JERSEY

DATED: JULY 12, 1982

This bill establishes a minimum 60-day period during which county inmates would be ineligible for parole and a modified parole procedure for county inmates which differs somewhat from that which applies to State inmates. This bill may be anticipated to result in a decrease in the sentenced population in county jails which amounts to approximately one-third of the total county jail population.

Section 1 creates a special panel for county prisoner parole reviews that may be composed of any two board members or any one member and one senior hearing officer. This provision allows for an increase in the number of panels which could meet on county parole matters.

Section 2 establishes parole eligibility for persons sentenced to county facilities: a) at any mandatory minimum term imposed; or if none is imposed, b) at one-third of the sentence less commutation or work credits; or c) upon service of 60 days of the inmate's aggregate sentence, whichever of these parole eligibility dates is greater. Also, subsection 2g. provides that notice of parole eligibility for county inmates shall be satisfied by the judge at sentencing and permits the parole board to adjust time periods concerning the parole processing of county inmates.

Section 3 addresses the scope of the parole reports which must be generated with reference to county penal institutions. Section 4 provides that parole release or denial of county inmates shall be in the same manner.

**SENATE INSTITUTIONS, HEALTH AND WELFARE
COMMITTEE**

STATEMENT TO

SENATE, No. 1458

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JUNE 28, 1982

As amended by committee, this bill establishes a minimum 60-day period during which county inmates would be ineligible for parole and a modified parole procedure for county inmates which differs somewhat from that which applies to State inmates. This bill may be anticipated to result in a decrease in the sentenced population in county jails which amounts to approximately one-third of the total county jail population.

The committee added a new Section 1 which creates a special panel for county prisoner parole reviews that may be composed of any two board members or any one member and one senior hearing officer. This provision allows for an increase in the number of panels which could meet on county parole matters.

Section 2 was amended to establish parole eligibility for persons sentenced to county facilities (a) at any mandatory minimum term imposed; or if none is imposed, (b) at one-third of the sentence less commutation or work credits; or (c) upon service of 60 days of the inmate's aggregate sentence, whichever of these parole eligibility dates is greater. Also, subsection 2g. provides that notice of parole eligibility for county inmates shall be satisfied by the judge at sentencing and permits the parole board to adjust time periods concerning the parole processing of county inmates.

Section 3 was added to address the scope of the parole reports which must be generated with reference to county penal institutions. Section 4 provides that parole release or denial of county inmates shall be in the same manner as State correctional inmates although time periods may be modified. The committee added a provision that performance of public service shall be a condition of parole for county sentenced inmates, where appropriate. The committee deleted section 3 permitting the parole board to delegate authority to county officers on county parole decisions.

Section 5 was added to provide that any county sentenced inmate on parole whose parole is revoked shall not be given credit for any

time served during that parole and shall not be eligible for parole during the remainder of the sentence.

Section 6 was added to provide that in the case of an inmate sentenced to a county facility prior to the effective date of this act, the parole board shall notify the sentencing court of the pending parole and the court shall have 10 days to deny the parole.

OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

CONTACT: DAVID DE MAIO

FRIDAY, JULY 16, 1982

Governor Thomas H. Kean, in a public ceremony in his outer office, today signed legislation expected to provide immediate relief for overcrowded county jails by restructuring the parole procedures governing county jail inmates.

The bill, A-1724, equalizes the State and County parole requirements by allowing inmates in county jails to be eligible for parole upon the completion of one-third of their sentence, less any work credits, provided they are not sentenced under a mandatory minimum term.

The bill makes one other exception to the one-third rule in providing that all county inmates must serve a minimum of 60 days of their aggregate sentence before being eligible for parole.

Governor Kean called today's action, "a first step toward a responsible solution to the prison overcrowding problem."

"This bill remedies a highly inequitable situation without endangering any of our communities; and as a side benefit, we hope to see some immediate relief in our county jails."

In investigating solutions to the prison overcrowding crisis, the Governor's Office of Policy and Planning became aware of county inmate parole procedures which were keeping certain county prisoners behind bars a disproportionately longer time than inmates in State institutions.

Under current law, State inmates are usually eligible for parole after completing one-third of their sentence, less work credits, provided no mandatory minimum term applies. By contrast, a county inmate must serve a minimum of 9 months of their sentence before being eligible for parole.

A State inmate serving a four-year term, for example, often is eligible for parole after 9 months --- effectively serving the same prison time as a county prisoner convicted of a lesser crime and sentenced to a 9 month sentence. This bill eliminates the inequity.

A number of the 5,200 county inmates currently incarcerated are expected to be eligible for parole immediately. Under the new law's provisions, the Parole Board must notify an inmate's sentencing court that the court has 10 days in which to deny parole to eligible inmates.

Not present at today's ceremony were the Assembly and Senate sponsors of the bill, Assemblyman Dean A. Gallo (R-Morris) and Senator S. Thomas Gagliano (R-Monmouth). A-1724, was substituted for its identical Senate counterpart, S-1458, on July 12th.

Joining the Governor were representatives of the State Parole Board and the Attorney General's Office, and Corrections Commissioner William Fauver.

The new law, which is part of Governor Kean's prison reform program, received wide support from county sheriffs, the State Parole Board, and the State Corrections Department.

Four other legislative planks of the Governor's reform package are scheduled for a floor vote in the Senate on Thursday: Legislation to authorize the Corrections Commissioner to transfer inmates among State and County facilities; a bill to allow the Governor to declare a prison overcrowding emergency and order accelerated parole eligibility for certain criminals; a bill to allow sentencing judges to extend the county jail sentence they may impose as a condition of probation; and legislation to place before the voters a \$170 million prison construction bond issue which will make over 2,000 new beds available in two new prisons.

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