

Parole, Sex Offenders and Rehabilitation Programs

This note by the New South Wales Council for Civil Liberties addresses concerns held by some NSW prisoners about a perceived requirement for sex offenders to undertake rehabilitation programs if they wished to be granted parole. There is no legal requirement to undertake such courses and the following is a comment on the legal position and the operation of the parole board.

In NSW, offenders who are serving custodial sentences, periodic detention or home detention¹ are eligible for release when the offender has served the non-parole period of sentences against them². Release on parole can only occur in accordance with a parole order directing the release of the offender³. Parole orders are made at the time of sentence by the sentencing court⁴, or otherwise by the Parole Board⁵.

In making parole orders regarding sentences of greater than⁶, or less than⁷, three years, in cases involving non-serious offenders, the Parol Board may only make an order for release if it decides that release of the offender "is appropriate, having regard to the principle that the public interest is of primary importance"⁸.

In making decisions as to whether or not to make a parole order the Parole Board is bound to consider all of the following matters under s135(2):

- (a) any relevant comments made by the sentencing court,
- (b) the offender's antecedents,
- (c) the likely effect on any victim of the offender, and on any such victim's family, of the offender being released on parole,
- (d) any report prepared by or on behalf of the Crown in relation to the granting of parole to the offender,
- (e) any report required by the regulations to be furnished to the Parole Board in relation to the granting of parole to the offender,
- (f) the offender's conduct to date while serving his or her sentence, including:
 - (i) the attitudes expressed by the offender, and
 - (ii) the offender's willingness to participate in rehabilitation programs,
- (g) the availability to the offender of family, community or government support,
- (h) the likelihood that, if granted parole, the offender will be able:
 - (i) to benefit from participation in a rehabilitation program, and
 - (ii) to adapt to normal lawful community life,

¹ Crimes (Administration of Sentences) Act 1999 ("The Act"): s125.

² The Act: s126.

³ The Act:s127.

⁴ Under s50 Crimes (Sentencing Procedure) Act 1999 the court, for sentences of under 3 years duration, may order the prisoner be released at the expiration of the non-parole period.

⁵ Under ss 138, 141, 149, 150 (on confirmation), 154A, 159 and 160; Noting that appeals to the Court of Criminal Appeal

⁶ The Act s135 (1).

⁷ The Act s159 (2) refers the parole board to Division 2 two of the part including the general clause s135.

⁸ The Act s135 (1).

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- (i) any special circumstances of the case,
(j)
such other matters as the Parole Board considers relevant.

In the case of a serious offender the Parole board must consider the same factors, although there are additional procedural requirements. These requirements are not considered in this note.

The Parole Board is bound to apply the law, and to consider all of the above matters in making decisions to grant parole orders. The Parole board does not have codified policy on particular offences or gaol programs. It applies the law in each individual case.

In the case of prisoners who have been convicted of sexual offences despite pleading not guilty – which is understood to be in the minority of cases – the failure of offenders to undertake rehabilitation programs due to a determination to not admit guilt will not be considered as a single, definitive reason for a decision of the Parole Board not to grant a parole order. The Board must consider other factors as well. The weight that the Board places on each factor is likely to be affected by the attitude of the offender to the process and to their conduct during sentence.

Further, the Parole Board does not consider “completion” of rehabilitation courses. The relevant section of the Crimes (Administration of Sentences) Act (Section 135), which contains matters the Parole board must consider, refers to the offender’s *willingness to participate in rehabilitation programs*⁹. If offenders have been refused entry to programs because of an adherence to their innocence (despite their conviction) then the offenders willingness to participate – if genuine – would be considered by the parole board rather than the failure to complete programs. The undertaking of rehabilitation is only one part of the parole boards consideration of the offenders conduct while serving their sentence¹⁰. Rehabilitation and courses for it are considered alongside the attitudes of the offender¹¹ and also presumably alongside corrective service reports of behaviour¹².

The New South Wales Council for Civil Liberties is aware of parole board decisions both to grant parole in cases where offenders charged with sex related offences have been release having not completed rehabilitation courses; and also of cases where parole has been refused to offenders who have completed such courses successfully.

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⁹ The Act s135 (2)(f)(ii)

¹⁰ The Act s135 (2)(f)

¹¹ The Act s135 (2)(f)(i)

¹² Although the act is silent on this point in s135.
