

## RULE PROPOSALS

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### INTERESTED PERSONS

The Department of Corrections provides notices of rule proposals in the New Jersey Register (N.J.R.), a semi-monthly official publication of the Office of Administrative Law which contains all State agency rule proposals and adoptions. The following paragraph is quoted from the Proposal section of the New Jersey Register:

**Interested persons** may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

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### CORRECTIONS

#### THE COMMISSIONER

##### **Eligibility for Cash or Remission of Time from Sentence**

##### **Proposed Amendments: N.J.A.C. 10A:9-5.1 and 5.2 and 10A:31-23.1**

Authorized By: Gary M. Lanigan, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6, 30:1B-10, and 30:4-123.51.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2013-055.

Submit written comments by May 31, 2013 to:

Melissa H. DiGregorio, Acting Supervisor  
Administrative Rules Unit  
Office of the Commissioner  
New Jersey Department of Corrections  
PO Box 863  
Trenton, New Jersey 08625-0863

The agency proposal follows:

### Summary

As the Department of Corrections (Department) has determined that the comment period for this notice of proposal shall be 60 days, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

N.J.A.C. 10A:31-23.1 sets forth adult county correctional facility rules regarding eligibility for cash or remission of time from sentence. New subsection (e) is proposed in order to clarify that commutation credits are not awarded until after the expiration of the mandatory minimum portion of the sentence. A cross-reference to the enabling legislation at N.J.S.A. 30:4-123.51 has been included to provide further information regarding the awarding of commutation credits. Similarly, new subsection (f) is proposed to provide clarification regarding the awarding of credits relative to mandatory minimum terms.

N.J.A.C. 10A:9-5.1 and 5.2 are proposed for amendment to change “may” to “shall” as all of these clauses are clearly mandatory and this change would remove any possible confusion and “part” is changed to “portion” for internal consistency and to be consistent with new N.J.A.C. 10A:31-23.1(e).

### **Social Impact**

The proposed amendments are anticipated to have an overall positive social impact. The proposed amendments are intended to clarify provisions regarding the awarding of commutation credits and the remission of time from sentence. The proposed amendments serve to clarify the rules and directly reference the specific enabling legislation providing the authority for the rules.

### **Economic Impact**

Additional funding is not necessary to implement the requirements of the proposed amendments. The cost of meeting and maintaining the requirements of the proposed amendments are met by the Department through the established budget with funds allocated by the State.

### **Federal Standards Statement**

The proposed amendments are promulgated under the authority of the rulemaking requirements of the Department of Corrections as established at N.J.S.A. 30:1B-6 and 30:1B-10. The proposed amendments are not subject to any Federal statutes, requirements, or standards; therefore, a Federal standards analysis is not required.

### **Jobs Impact**

The proposed amendments will cause neither the generation nor the loss of any jobs.

### **Agriculture Industry Impact**

The proposed amendments shall have no impact on the agriculture industry.

### **Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments affect inmates, the New Jersey Department of Corrections, and governmental entities responsible for the enforcement of the Department’s rules.

### **Housing Affordability Impact Analysis**

The proposed amendments shall have no impact on housing affordability and there is an extreme unlikelihood that the proposed amendments would evoke a change in the average cost associated with housing in New Jersey. The proposed amendments concern the remission of time from sentence affects inmates, the New Jersey Department of Corrections, and governmental entities responsible for the enforcement of the Department’s rules.

## Smart Growth Development Impact Analysis

The proposed amendments shall have no impact on smart growth development because the proposed amendments do not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey. The proposed amendments concern the remission of time from sentence affects inmates, the New Jersey Department of Corrections, and governmental entities responsible for the enforcement of the Department's rules.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

### SUBCHAPTER 5. COMMUTATION AND WORK TIME

#### 10A:9-5.1 Authority

- (a) Commutation credit is awarded to inmates pursuant to N.J.S.A. 30:4-140, which provides:
1. (No change.)
  2. Commutation credits [are] **shall not be** awarded until after the expiration of the mandatory minimum portion of the sentence. When the mandatory minimum [part] **portion** of the sentence has been served, commutation credits are awarded on the full sentence.
  - 3.-5. (No change.)
- (b) (No change.)

#### 10A:9-5.2 Exceptions; time in custody; failure to work

- (a) [No commutation] **Commutation** or work credits shall **not** be given to any inmate sentenced for sex offenses under the provisions of N.J.S.A. 2A:164. However, those inmates who have been sentenced or resentenced under N.J.S.A. 2C are eligible to receive commutation and work credits from the effective date of that law, September 1, 1979.
- (b) In all cases where the sentence includes a mandatory minimum term of imprisonment, commutation credits, work credits, gap time, and minimum credits [may] **shall not** be applied to the mandatory minimum term, but [may] **shall** only reduce the maximum term.
- (c) [In no case may commutation] **Commutation** credits, work credits, gap time, and minimum credits **shall not** be used to reduce a maximum sentence to a period of incarceration that is less than the judicial or statutory mandatory minimum term.
- (d) [No commutation] **Commutation** credits shall **not** be given for any time served in custody between arrest and imposition of sentence. Work credits may be given for work performed in the county jail prior to sentencing if the work time is verified in writing by the adult county correctional facility Administrator.
- (e) Work credits [may] **shall not** be applied in cases where an inmate does not work because of choice, unavailability of sufficient job assignments, medical lay-in (except for job related injuries), court remand, disciplinary lock-up, or similar incapacity. Inmates who refuse to perform assigned work shall receive disciplinary charges in accordance with N.J.A.C. 10A:4.
- (f) (No change.)

### SUBCHAPTER 23. REMISSION OF TIME FROM SENTENCE

#### 10A:31-23.1 Eligibility for cash or remission of time from sentence

- (a) - (d) (No change.)
- (e) Pursuant to N.J.S.A. 30:4-123.51, **commutation credits shall not be awarded until after the expiration of the mandatory minimum portion of the sentence. When the mandatory minimum portion of the sentence has been served, commutation credits are awarded on the full sentence.**

**(f) In accordance with N.J.S.A. 30:4-123.51, commutation credits, work credits, gap time, and minimum credits shall not be used to reduce a maximum sentence to a period of incarceration that is less than the judicial or statutory mandatory minimum term.**