

**CORRECTIONS**

**THE COMMISSIONER**

**Earn Your Way Out Act**

**Proposed Amendments: N.J.A.C. 10A:9-5.1, 5.2, and 6.2**

Authorized By: Marcus O. Hicks Esq., Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6, 30:1B-10, and 30:4-123.55b.

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

Proposal Number: PRN 2021-043.

Submit written comments by July 2, 2021, to:

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The agency proposal follows:

**Summary**

The proposed amendments are intended to promulgate and incorporate the required changes at N.J.A.C. 10A:9-5.1 and 5.2, as set forth at N.J.S.A. 30:4-123.55b et seq., the Earn Your Way Out Act (Act), effective February 1, 2021. The Act requires the Department of Corrections (Department), along with the New Jersey State Parole Board (Parole Board), to develop reentry plans for inmates, so that they are better prepared to become productive citizens

upon on leaving prison. In this rulemaking, the Department proposes to amend N.J.A.C. 10A:9-5.1, 5.2, and 6.2 to incorporate the portions of the Act that foster earlier release and create credits leading to an earlier ending of parole.

The Department proposes to amend N.J.A.C. 10A:9-5.1(a) to reflect the gender neutral language changes included in the Act by replacing all references to “him” with “the person” and replacing “his or her” with “the person’s.” The Department proposes to use “custodial sentence” instead of “committed to any State correctional facility for a minimum-maximum term” in the first sentence at N.J.A.C. 10A:9-5.1(a)1, for consistency with language in the Act. N.J.A.C. 10A:9-5.1(a)1 is proposed for amendment to explain how to apply time credits contained in the chart, which appear in the Act, to provide transparency in the manner in which the time credits are applied. In addition, the Department proposes to add the following example of the how the credits are applied: “If the sentence is three years, six months the number of years in the sentence appears in the first column and the corresponding credits in the middle column are 252. The credits for each month over the initial three years appears in the last column and is applied per month. In other words, the credit for six months at eight credits per month equals 48 days. Based on the table, the total commutation credits for three years, six months is 300 days (252 plus 48). If the sentence is eight years, two months, then the credits for eight years equals 756 and the monthly credits are 10 days per month, or 20 days for a total of 776 days (756 plus 20).”

At N.J.A.C. 10A:9-5.1(a)2, the Department proposes to replace the existing language to simplify it to state that commutation time will not reduce statutory mandatory minimum terms. At N.J.A.C. 10A:9-5.1(a)4, the amendments proposed include a second type of commutation time credit based on implementation of the Act. Before implementation on February 1, 2021, no

commutation time credit was provided for time served in custody between the time of arrest and sentencing. But on February 1, 2021, and afterward such credit will be applied. The Department proposes to replace the words, “no commutation credits shall be calculated as provided for in this subchapter” at the beginning half of the first the sentence and replace them with the words “commutation credit calculation for.” In addition, the Department proposes to add two options for applying credits at N.J.A.C. 10A:9-5.1(a)4. They differentiate based on the effective date of the Act. N.J.A.C. 10A:9-5.1(a)4i would state “shall not be applied for any offense committed prior to February 1, 2021” and N.J.A.C. 10A:9-5.1(a)4ii would state “shall be applied for any offense committed on or after February 1, 2021.” The Department also proposes to amend the first sentence at N.J.A.C. 10A:9-5.2(d).

The Department proposes to add new N.J.A.C. 10A:9-5.1(b)4 to codify special credits implemented by the Commissioner for the completion of approved programs as of January 20, 2020, as provided for at N.J.S.A. 30:4-92a, along with adding the words “special credits” to N.J.A.C. 10A:9-5.2(b) and (c).

In order to include the Parole Board in development of an ongoing plan for release, as required by the Act, the Department also proposes to add a new non-voting member from the State Parole Board to the Institutional Classification Reception Committee (ICRC) at N.J.A.C. 10A:9-6.2(d).

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The proposed amendments incorporate the requirements of the Earn Your Way Out Act, N.J.S.A. 30:4-123.55b and 30:4-92a, into the administrative rules of the Department. The Act

and the proposed amendments provide additional mechanisms for inmates to earn credits that could shorten sentences and increase parole eligibility and result in a shorter term of incarceration and the preparation of inmates for successful integration as productive, law-abiding citizens upon release from incarceration. The Department anticipates a positive social impact on the general public and inmate population resulting from the proposed amendments.

### **Economic Impact**

The cost of meeting and maintaining the requirements of the proposed amendments should be accommodated within the existing budget.

### **Federal Standards Statement**

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

### **Jobs Impact**

The proposed amendments will have no impact on jobs.

### **Agriculture Industry Impact**

The proposed amendments will 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 in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments only impose reporting, recordkeeping, and other compliance requirements on the New Jersey

Department of Corrections, the Parole Board, and governmental entities responsible for the enforcement of the 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 costs associated with housing. The proposed amendments set forth requirement changes to commutation credits and how they are applied. The requirements of the Act concern inmates in New Jersey State correctional facilities, the New Jersey Department of Corrections, and governmental entities responsible for the enforcement of the rules.

### **Smart Growth Impact Development Analysis**

The proposed amendments will have no impact on the achievement of smart growth and there is an extreme unlikelihood the proposed amendments will evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendments set forth requirements for the application of commutation credits and special credits required by legislation.

### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The Department of Corrections has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, or probation, but will have a positive impact on parole policies by modifying commutation time credits calculations in the State. Accordingly, no further analysis is required.

**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. For every year or fractional part of a year of **custodial** sentence imposed upon any person [committed to any State correctional facility for a minimum-maximum term] there shall be remitted to [him or her] **the person** from both the maximum and minimum terms of [his or her] **the person's** sentence, for continuous orderly deportment, the progressive commutation credits indicated in the schedule herein. **When a sentence contains a fractional part of a year contained in either the minimum or maximum sentence requirement, then time credits shall be calculated at the rate set forth below. Column one is the number of years of the sentence in whole numbers. Column two is the number of progressive credits in days associated with the number of years in column one. Column three is the number of days associated with each full month in excess of a full year. In order to determine the entire number of credit days available, the following formula should be applied. Number of days in Column two + (Number of months in excess of the full year multiplied by Column three) = Total potential credit days available. For example: if the sentence is three years, six months, then the number of years in the sentence appears in the first column and the corresponding credits in the middle column are 252. The credits for each month over the initial three years appears in the last column and is applied per month. In other words, the credit for six months at eight credits per month equals 48 days. Based on the table, the total commutation credits for three years, six months is 300 days (252 plus 48). If the**

sentence is eight years, two months, then the credits for eight years equals 756 and the monthly credits are 10 days per month, or 20 days for a total of 776 days (756 plus 20).

<b>Minimum and Maximum Sentences in Years</b>	<b>Progressive Credits for Minimum and Maximum Sentences in Years (Days)</b>	<b>Credits for Each Full Month of Fractional Part of a Year in Excess of Column One (Days)</b>
<b>1</b>	<b>72</b>	<b>7</b>
<b>2</b>	<b>156</b>	<b>8</b>
<b>3</b>	<b>252</b>	<b>8</b>
<b>4</b>	<b>348</b>	<b>8</b>
<b>5</b>	<b>444</b>	<b>8</b>
<b>6</b>	<b>540</b>	<b>8</b>
<b>7</b>	<b>636</b>	<b>10</b>
<b>8</b>	<b>756</b>	<b>10</b>
<b>9</b>	<b>876</b>	<b>10</b>
<b>10</b>	<b>996</b>	<b>10</b>
<b>11</b>	<b>1,116</b>	<b>10</b>
<b>12</b>	<b>1,236</b>	<b>11</b>
<b>13</b>	<b>1,368</b>	<b>11</b>
<b>14</b>	<b>1,500</b>	<b>11</b>

15	1,632	11
16	1,764	11
17	1,896	12
18	2,040	12
19	2,184	12
20	2,328	12
21	2,472	12
22	2,616	13
23	2,772	13
24	2,928	13
25	3,084	15
26	3,264	15
27	3,444	15
28	3,624	15
29	3,804	15
30	3,984	16

[2. 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.]

**2. Commutation time will not reduce the statutory mandatory minimum term.**

3. When a sentence contains a fractional part of a year in either the minimum or maximum thereof, then commutation credits in reduction of [such] **the** fractional part of a year



shall be calculated at the rate set out in the schedule for each full month of [such] **the** fractional part of a year of sentence.

4. [No commutation] **Commutation** credit[s shall be calculated as provided for in this subchapter on] **for** time served by any person in custody between [his or her] **their** arrest and the imposition of sentence[.]:

**i. Shall not be applied for any offense committed prior to February 1, 2021; and**

**ii. Shall be applied for any offense committed on or after February 1, 2021.**

5. (No change.)

(b) Work time credit is awarded to inmates pursuant to N.J.S.A. 30:4-92, which provides:

1.-3. (No change.)

**4. An inmate who completes an approved program on or after January 20, 2020, and whose current aggregate maximum release date is greater than 210 days may earn special credits that may reduce the maximum release date.**

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

(a) (No change.)

(b) In all cases where the sentence includes a mandatory minimum term of imprisonment, commutation credits, **special credits**, work credits, gap time, and minimum credits shall not be applied to the mandatory minimum term, but shall only reduce the maximum term.

(c) Commutation credits, **special 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) Commutation credits shall [not] be given [for any time served in custody between arrest and imposition of sentence], **as set forth at N.J.A.C. 10A:9-5.1(a)**. 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)-(f) (No change.)

#### SUBCHAPTER 6. INSTITUTIONAL CLASSIFICATION RECEPTION COMMITTEE

(I.C.R.C.)

10A:9-6.2 Composition of the Institutional Classification Reception Committee (I.C.R.C.)

(a)-(c) (No change.)

**(d) A non-voting representative from the State Parole Board shall serve as a member of the I.C.R.C.**