

sentence shall reduce the presumptive primary eligibility date established pursuant to (a), (b), (c) or (e) above.

(g) Except as provided herein, any primary eligibility date for a young adult offender established pursuant to this section or N.J.A.C. 10A:71- 7.17, 7.17A or 7.17B may be reduced through program participation by the inmate.

1. If such inmate's level of program participation is above average, the reduction shall be the rate of 15 days for every month of the primary eligibility term less jail credits.

2. If such inmate's level of program participation is average, the reduction shall be at the rate of 10 days for every month of the primary eligibility jail term less jail credits.

3. If such inmate's level of program participation is below average, the 150 reduction shall be at the rate of five days for every month of the primary eligibility term less jail credits.

4. If such inmate's level of program participation is poor, no reduction shall be made.

(h) An inmate's level of program participation shall be established by the young adult Board panel or an assigned hearing officer.

1. Upon the expiration of one-half of the inmate's primary eligibility term less jail credits, or upon incarceration for a one-year period, whichever is earlier, it shall be the responsibility of the chief executive officer of the institution of incarceration to report to the young adult Board panel, the extent of the inmate's program participation and the level of progress achieved by the inmate.

2. Upon consideration of such report, the young adult Board panel or an assigned hearing officer shall establish the inmate's level of program participation and corresponding eligibility reduction and shall advise the inmate and the chief executive officer in writing of such determination and the reasons therefor.

(i) Parole eligibility dates shall be restricted as follows:

1. Except in the case of murder or kidnapping, under no circumstances shall a primary eligibility date for a young adult inmate sentenced for a first degree crime be established at greater than 60 months.

2. Under no circumstances shall a primary eligibility date for a young adult inmate sentenced for a second degree crime be established at greater than 28 months.

3. Under no circumstances shall a primary eligibility date for a young adult inmate sentenced for a third degree crime be established at greater than 16 months.

4. Under no circumstances shall a primary eligibility date for a young adult inmate sentenced for a fourth degree crime be established at greater than nine months.

(j) If an adult has received an indeterminate sentence and a State Prison sentence, the parole eligibility term derived from the indeterminate sentence shall be aggregated with the eligibility term on the State Prison sentence and credits pursuant to N.J.A.C. 10A:71-3.2(g)2 shall apply to the aggregate parole eligibility term.

(k) The prior provisions of (a) above shall apply to young adult inmates whose offenses were committed prior to March 5, 1990 and shall continue in effect for that purpose. The amendments to (a) above shall apply to young adult inmates whose offenses were committed on or after March 5, 1990.

R.1980 d.226, effective May 21, 1980.

See: 12 N.J.R. 335(b).

As amended, R.1980 d.359, effective August 7, 1980.

See: 12 N.J.R. 420(b), 12 N.J.R. 538(a).

As amended, R.1980 d.554, effective December 23, 1980.

See: 12 N.J.R. 664(e), 13 N.J.R. 101(c).

(f)1-3, 5 and (g)1: term "less jail credits" added.

Amended by R.1985 d.213, effective May 6, 1985.

See: 16 N.J.R. 3391(a), 17 N.J.R. 1096(a).

Section substantially amended.

Amended by R.1986 d.306, effective August 4, 1986.

See: 18 N.J.R. 929(a), 18 N.J.R. 1610(a).

New (f): redesignated (f)-(j) as (g)-(k).

Amended by R.1990 d.141, effective March 5, 1990.

See: 21 N.J.R. 3411(c), 22 N.J.R. 825(a).

Specifies Category E is second degree offense and changes effective date in (k) to March 5, 1990.

Amended by R.1995 d.109, effective February 21, 1995.

See: 26 N.J.R. 4150(a), 27 N.J.R. 686(b).

Amended by R.1997 d.168, effective April 7, 1997.

See: 28 N.J.R. 3870(a), 29 N.J.R. 1318(a).

In (g), inserted additional N.J.A.C. reference.

Amended by R.1999 d.252, effective August 2, 1999.

See: 31 N.J.R. 1140(a), 31 N.J.R. 2218(a).

In (g), changed N.J.A.C. references in the introductory paragraph.

Amended by R.2010 d.274, effective December 6, 2010.

See: 42 N.J.R. 1296(a), 42 N.J.R. 2960(a).

Rewrote the table and the notes following the table in (a).

#### Case Notes

"Gap time credit" applied to reduce the maximum indeterminate sentence to which a juvenile could be subject. *Mitnaul v. New Jersey State Parole Bd.*, 280 N.J.Super. 164, 654 A.2d 1022 (A.D.1995).

Imposition of indeterminate sentence upon young adult offender following violation of probation was permissible. *State v. Berger*, 258 N.J.Super. 553, 610 A.2d 892 (A.D.1992).

Imposition of indeterminate sentence upon young adult offender following parole violation was supported by evidence. *State v. Berger*, 258 N.J.Super. 553, 610 A.2d 892 (A.D.1992).

Failure to justify by good cause imposition of concurrent seven-year indeterminate terms upon young adult offender required reduction to term not exceeding five years. *State v. Davis*, 229 N.J.Super. 66, 550 A.2d 1241 (A.D.1988).

Sentencing judge did not err in determining that presumption against imprisonment of first offender was overcome because defendant was a volunteer fireman; custodial sentence imposed should have been one of several meaningful conditions of probation. *State v. Gardner*, 215 N.J.Super. 84, 521 A.2d 357 (App.Div.1987), remanded 113 N.J. 510, 551 A.2d 981.

Parole eligibility date reduction methods examined; due process violated for imposition of a sentence five times greater than original sentence, absent justification, after successful challenge to illegal original sentence. *State v. Heisler*, 192 N.J.Super. 586, 471 A.2d 805 (App.Div.1984).

**10A:71-3.4 Institutional infractions; adult inmates**

(a) It shall be the responsibility of the chief executive officer, within seven days of resolution of any administrative appeal, to notify in writing the senior Board representative at the institution that an adult inmate has committed an institutional infraction listed in (c) below.

(b) Except as otherwise provided in N.J.A.C. 10A:71-5, upon being advised by the senior Board representative at the institution that an adult inmate has committed an institutional infraction listed in (c) below, the appropriate Board panel or designated hearing officer may increase the inmate's eligibility date according to the schedule listed herein.

(c) The appropriate Board panel, designated hearing officer or senior Board representative at the institution shall, at least 14 days prior to the consideration of the adult inmate's case, notify the inmate in writing of the following:

1. The inmate's case and institutional records will be reviewed for the possible increase in the inmate's parole eligibility date as a result of the commission of an institutional infraction(s);

2. The inmate may submit in writing to the appropriate Board panel or designated hearing officer a statement pertaining to any mitigating circumstances.

(d) Institutional infractions specified and defined by the Department shall be assigned to categories on the following basis:

1. Infraction Category A shall consist of .001, Killing.

2. Infraction Category B shall consist of .101, Escape (provided such escape is from a medium or maximum security location); .201, Possession or introduction of an explosive, incendiary device or any ammunition; .202, Possession or introduction of a gun, firearm, weapon, sharpened instrument, knife, or unauthorized tool (provided such weapon is a gun or other firearm); and .251, Rioting.

3. Infraction Category C shall consist of .003, Assaulting any person with a weapon; .006, Extortion, blackmail, protection, demanding or receiving favors, money or anything of value in return for protection against others, to avoid bodily harm, or under threat of informing; .101, Escape (provided such escape is from a minimum security location); .102, Attempting or planning escape (provided such attempt is from a medium or maximum security location); .202, Possession or introduction of a gun, firearm, weapon, sharpened instrument, knife, or unauthorized tool (provided such weapon is not a gun or other firearm); .252, Encouraging others to riot; and .551, Making or possessing intoxicants or alcoholic beverages.

4. Infraction Category D shall consist of .002, Assaulting any person; .102, Attempting or planning escape (provided such attempt is from a minimum security location);

.007, Hostage taking; .151, Setting a fire; .155, Adulteration of any food or drink; .203, Possession or introduction of any narcotic paraphernalia, drugs, or intoxicants not prescribed for the individual by the medical or dental staff; .204, Use of any narcotic paraphernalia, drugs, or intoxicants not prescribed for the individual by the medical or dental staff; .207, Possession of money or currency (in excess of \$50.00 unless specifically authorized); .214, Possession of unauthorized keys or other security equipment; .253, Engaging in, or encouraging, a group demonstration; .255, Encouraging others to refuse to work or to participate in work stoppage; .552, Being intoxicated; and .751, Giving or offering any official or staff member a bribe, or anything of value.

5. Infraction Category E shall consist of .004, Fighting with another person; .005, Threatening another with bodily harm or with any offense against his person or his property; .153, Stealing (Theft); .257, Violating a condition of any community release program; .258, Refusing to submit to urine analysis; .325, Counterfeiting, forging or unauthorized reproduction or unauthorized use of any classification document, court document, psychiatric, psychological or medical report, money or any other official document; .704, Perpetrating frauds, deceptions, confidence games, riots or escape plots through mail; and .708, Refusal to submit to a search.

6. Infraction Category F shall consist of .205, Misuse of authorized medication; .306, Conduct which disrupts or interferes with the security or orderly running of the institution; and .601, Gambling.

7. Infraction Category G shall consist of .803, Attempting to commit any of the above acts preceded by an asterisk, aiding another person to commit any such act, or making plans to commit such acts shall be considered the same as a commission of the act itself.

(e) Except as provided herein, an infraction in any category defined pursuant to (d) above shall result in an increase of the inmate's eligibility date as follows:

1. Category A: 60 months;

2. Category B: 12 months;

3. Category C: Nine months;

4. Category D: Six months;

5. Category E: Four months;

6. Category F: Three months;

7. Category G: One half of the increase which would be required pursuant to this subsection if the inmate's action had resulted in the commission of the infraction which he or she attempted.

(f) The appropriate Board panel or designated hearing officer shall notify the inmate and the chief executive officer