

- 2A:96-3 Debauching or impairing the morals of a child under the age of 16;
- 2A:138-1 Rape or carnal abuse;
- 2A:138-2 Carnal knowledge of female inmates of a home or institution for the feeble minded or mentally ill;
- 2A:143-1 Sodomy;
- 2A:143-2 Sodomy with children under 16;
- 2A:85-5 Attempt to commit any of the foregoing offenses;
- 2A:85-14 Aiding and abetting the commission of any of the foregoing offenses;
- 2A:98-1 Conspiracy to commit any of the foregoing offenses; and/or
- 2A:164-3 Any conviction obtained under this section, except lewdness; and/or

2. The other offenses are as follows:

- 2C:13-1 Kidnapping, if the victim is a minor, the offender is not the parent and a sexual component does not exist;
- 2C:13-2a. and b. Criminal restraint, if the victim is a minor, the offender is not the parent and a sexual component does not exist; and
- 2C:13-3 False imprisonment, if the victim is a minor, the offender is not the parent and a sexual component does not exist.

(d) An inmate who presently is serving a sentence for one count of an arson offense and who has a prior adult conviction for an arson offense; an inmate who presently is serving a sentence for more than one count of an arson offense; or an inmate who presently is serving a sentence for a non-arson offense but who has more than one prior adult conviction for an arson offense, may not be considered for reduced custody.

(e) An inmate who has two or more convictions for a sexual offense or other offense as listed in (c) above, arson or fire setting or criminal mischief involving arson or any combination of these offenses shall not be eligible for reduced custody consideration.

(f) An inmate who has two or more instances of escape or attempted escape or a combination of either through convictions or prohibited acts shall not be eligible for reduced custody consideration.

The following annotations apply to N.J.A.C. 10A:9-4.7 prior to its repeal by R.2009 d.237:

Amended by R.1990 d.195, effective April 2, 1990.
 See: 21 N.J.R. 3050(a), 22 N.J.R. 1143(a).
 (c)3. deleted and replaced, reference to "in-and-out custody status" deleted.
 Amended by R.1992 d.79, effective February 18, 1992.
 See: 23 N.J.R. 3721(a), 24 N.J.R. 612(a).
 Revised (c)2.
 Petition for Rulemaking.
 See: 31 N.J.R. 1385(a).
 Petition for Rulemaking.
 See: 31 N.J.R. 3537(a), 31 N.J.R. 4127(b).
 Petition for Rulemaking.
 See: 32 N.J.R. 2165(b).

Amended by R.2002 d.190, effective June 17, 2002.
 See: 34 N.J.R. 1082(a), 34 N.J.R. 2030(a).
 In (c)3, substituted "Administrator" for "Superintendent" preceding "of A.D.T.C."

The following annotations apply to N.J.A.C. 10A:9-4.7 subsequent to its recodification from N.J.A.C. 10A:9-4.8 by R.2009 d.237:

Amended by R.1990 d.195, effective April 2, 1990.
 See: 21 N.J.R. 3050(a), 22 N.J.R. 1143(a).
 Exception to A.D.T.C. inmates added in (a).
 Amended by R.1997 d.122, effective March 17, 1997.
 See: 29 N.J.R. 80(b), 29 N.J.R. 880(a).
 Revised (e) and added (f).
 Petition for Rulemaking.
 See: 32 N.J.R. 608(c).
 Petition for Rulemaking.
 See: 37 N.J.R. 362(a).
 Petition for Rulemaking.
 See: 38 N.J.R. 344(c).
 Amended by R.2007 d.42, effective February 5, 2007.
 See: 38 N.J.R. 4389(a), 39 N.J.R. 489(a).
 Section was "Not eligible to be considered for reduced custody status". In (c)1, added table entries for 2C:13-1, 2C:13-2, 2C:13-3, 2C:13-6, and 2C:34-1b.(3).
 Amended by R.2007 d.379, effective December 17, 2007.
 See: 39 N.J.R. 2445(a), 39 N.J.R. 5340(b).
 In table entry "2C:5-1" in (c)1, substituted "24-4" for "23-4".
 Amended by R.2008 d.275, effective September 15, 2008.
 See: 40 N.J.R. 3571(a), 40 N.J.R. 5240(a).
 In (a), inserted "and" preceding "Treatment"; in the introductory paragraph of (c), inserted a comma following "any other state" three times and "who" following "nonsexual offense and", and substituted "or" for "of" preceding the last occurrence of "the United States"; and in the table in (c)1, in entries "2C:13-1", "2C:13-2", and "2C:13-3", deleted "the victim is a minor, the offender is not a parent and" preceding "a sexual", substituted "imprisonment" for "Imprisonment" in entry "2C:13-3", deleted "of" preceding "child" in entry "2C:13-6", and added entry "2C:34-1b.(4)".
 Recodified from N.J.A.C. 10A:9-4.8 and amended by R.2009 d.237, effective August 3, 2009.
 See: 41 N.J.R. 1645(a), 41 N.J.R. 2925(a).
 Rewrote the section. Former N.J.A.C. 10A:9-4.7, Criteria for consideration for gang minimum custody status only, repealed.

Case Notes

Decision of Institutional Classification Committee, initially withholding "full minimum custody status" from newly-transferred inmate with aggravated manslaughter conviction who had received that custody status at other prison facility, was not abuse of discretion. *Smith v. Dept. of Corrections*, 346 N.J. Super. 24, 786 A.2d 165 (A.D. 2001).

Decision of assistant superintendent at prison facility, denying newly-transferred inmate's application for the "full minimum custody status" he had been granted at other facility, was not a final, immutable determination due to inmate's aggravated manslaughter conviction and/or the location of the prison with respect to a residential area; applicable regulations allowed continuous review of inmate's custody status. *Smith v. Dept. of Corrections*, 346 N.J. Super. 24, 786 A.2d 165 (A.D. 2001).

Prisoner's loss of reduced custody status due to amendment of regulation under which such status was not authorized due to prisoner's attempted escape and conviction for escape did not implement the ex post facto clauses of the state or federal constitutions. *Muhammad v. Balicki*, 327 N.J. Super. 369, 743 A.2d 376 (N.J. Super. A.D. 2000).

10A:9-4.8 Criteria for consideration for gang minimum custody status only

(a) Inmates who meet the criteria set forth in this section shall be eligible to be considered for gang minimum custody status but not for full minimum custody status.

(b) In no case shall offenses adjudicated by a juvenile court be the sole basis for excluding an inmate from consideration.

(c) An inmate who is presently serving a sentence for one count of a sexual offense or criminal attempt and/or conspiracy to commit a sexual offense and has no prior adult convictions for sexual offenses, or an inmate who is presently serving a sentence for an offense that does not preclude reduced custody status but who has a prior adult conviction for one count of a sexual offense or criminal attempt and/or conspiracy to commit a sexual offense, may be considered for gang minimum custody status provided:

1. The inmate is otherwise eligible according to the criteria set forth in this subchapter;
2. There is a psychiatric or psychological evaluation, not more than six months old, which focuses specifically on the inmate's criminal sexual behavior and his or her likelihood for success in reduced custody status; or
3. The inmate is housed at the Adult Diagnostic and Treatment Center (A.D.T.C.) and is approved for reduced custody status by the Institutional Classification Committee (I.C.C.) and Administrator of A.D.T.C., only for job assignment on A.D.T.C. property.

(d) An inmate who presently is serving a sentence for one conviction of arson or fire setting or malicious destruction involving arson, with no previous such adult convictions; or an inmate presently serving a sentence for a nonarson offense but who has a prior adult conviction for arson, fire setting or malicious destruction involving arson, is eligible to be considered for gang minimum custody status provided:

1. He or she is otherwise eligible according to the criteria set forth in this subchapter; and
2. There is a psychiatric or psychological evaluation, not more than six months old, which focuses specifically on the inmate's likelihood for success in gang minimum custody status in light of the present or past conviction for arson.

(e) An inmate may be considered for gang minimum custody status when the inmate is presently serving a sentence, or the inmate has a prior adult conviction for the offenses of Kidnapping (N.J.S.A. 2C:13-1), Criminal restraint (N.J.S.A. 2C:13-2.a or b), False imprisonment (N.J.S.A. 2C:13-3) or any comparable out-of-State offense in which:

1. The victim was under the age of 18;
2. The offender is not the parent of the victim; and
3. There is no sexual component.

New Rule, R.2009 d.237, effective August 3, 2009.
See: 41 N.J.R. 1645(a), 41 N.J.R. 2925(a).

Former N.J.A.C. 10A:9-4.8, Eligibility limitations for reduced custody status, recodified to N.J.A.C. 10A:9-4.7.

10A:9-4.9 Assignment of inmates to satellite units, except Jones Farm and Rahway Camp

(a) Only those inmates who are classified as full minimum custody status may be assigned to satellite units.

(b) When assigning inmates to satellite units, the Institutional Classification Committee (I.C.C.) may consider the following factors:

1. Notoriety or reputation of a particular inmate in the surrounding community;
2. Proximity of the satellite unit to the local community;
3. Impact on community relations with the parent correctional facility, considering the inmate's criminal history and present record of incarceration; and
4. Any other factor which the Administrator or I.C.C. deems relevant to the inmate's successful placement at a satellite unit.

(c) Each parent correctional facility shall develop written guidelines consistent with this subchapter. These guidelines shall be submitted to the Assistant Commissioner, Division of Operations, New Jersey Department of Corrections, for review and approval.

(d) At the time of initial placement of an inmate in the correctional system, the Institutional Classification Reception Committee (I.C.R.C.) may assign an eligible inmate directly to an appropriate satellite unit.

New Rule, R.1990 d.195, effective April 2, 1990.

See: 21 N.J.R. 3050(a), 22 N.J.R. 1143(a).

Amended by R.1997 d.122, effective March 17, 1997.

See: 29 N.J.R. 80(b), 29 N.J.R. 880(a).

In (b)3, substituted "correctional facility" for "institution"; and in (c), substituted "correctional facility" for "institution" and "Assistant Commissioner, Division of Operations" for "Deputy Commissioner".

Amended by R.2002 d.190, effective June 17, 2002.

See: 34 N.J.R. 1082(a), 34 N.J.R. 2030(a).

In (b)4, substituted "Administrator" for "Superintendent" and deleted "Institutional Classification Committee" preceding "I.C.C."

Amended by R.2007 d.42, effective February 5, 2007.

See: 38 N.J.R. 4389(a), 39 N.J.R. 489(a).

Section was "Assignment of inmates to satellite units, except Jones Farm".

Amended by R.2007 d.379, effective December 17, 2007.

See: 39 N.J.R. 2445(a), 39 N.J.R. 5340(b).

In (c), inserted "and approval"; and in (d), substituted "Institutional Classification Reception Committee (I.C.R.C.)" for "Inter-Institutional Classification Committee (I.I.C.C.)".

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 sentence imposed upon any person committed to any State correctional facility for a minimum-maximum term there shall be remitted to him or her from both the maximum and minimum terms of his or her sentence, for continuous orderly deportment, the progressive commutation credits indicated in the schedule herein.

2. Commutation credits are not awarded until after the expiration of the mandatory minimum portion of the sentence. When the mandatory minimum part of the sentence has been served, commutation credits are awarded on the full sentence.

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

4. No commutation credits shall be calculated as provided for in this subchapter on time served by any person in custody between his or her arrest and the imposition of sentence.

5. In case of any flagrant misconduct, commutation credits may be declared to be forfeited pursuant to N.J.A.C. 10A:9-5.3.

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

1. The inmates of all correctional, charitable, hospital, relief and training institutions within the jurisdiction of the State Board of Institutional Trustees (Commissioner) shall be employed in such productive occupations as are consistent with the inmate's health, strength and mental capacity and shall receive such compensation therefor as the State Board of Institutional Trustees (Commissioner) shall determine.

2. Compensation for inmates of correctional facilities may be in the form of cash or remission of time from sentence or both. Such remission from the time of sentence shall not exceed one day for each five days of productive occupation, but remission granted under this section shall in no way affect deductions for good behavior or provided by law.

3. All inmates classified as minimum or community custody status and who are considered sufficiently trustworthy to be employed in honor camps, farms or details shall receive further remission of time from their sentences at the rate of three days per month for the first year of such employment and five days per month for the second and each subsequent year of such employment.

Amended by R.1992 d.79, effective February 18, 1992.

See: 23 N.J.R. 3721(a), 24 N.J.R. 612(a).

Revised (a).

Amended by R.1997 d.122, effective March 17, 1997.

See: 29 N.J.R. 80(b), 29 N.J.R. 880(a).

In (b)3, substituted "minimum or community custody status" for "minimum security".

Petition for Rulemaking.

See: 30 N.J.R. 4291(a).

Case Notes

Inmates have no liberty interest in a particular, or any, job assignment, nor in the wages or credits that can be earned by performing a prison work assignment. *Shabazz v. New Jersey Dep't of Corrections*, 385 N.J. Super. 117, 896 A.2d 473, 2006 N.J. Super. LEXIS 103 (App.Div. 2006).

Murder defendant's 30-year mandatory minimum term of imprisonment was not subject to reduction through application of commutation and work credits. *Merola v. Department of Corrections*, 285 N.J. Super. 501, 667 A.2d 702 (A.D.1995), certification denied.

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

(a) No commutation or work credits shall 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 not be applied to the mandatory minimum term, but may only reduce the maximum term.

(c) In no case may commutation credits, work credits, gap time and minimum credits 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 credits shall 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 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) Work credits shall not be awarded to Administrative Segregation inmates.

Amended by R.1989 d.299, effective June 5, 1989.
See: 21 N.J.R. 664(a), 21 N.J.R. 1516(c).

Provision that sentence may not be reduced to a period less than the minimum judicial or statutory mandatory term added at (c); recodification of (c)-(d) as (d)-(e).

Amended by R.1992 d.79, effective February 18, 1992.
See: 23 N.J.R. 3721(a), 24 N.J.R. 612(a).

Revised text.

Amended by R.2001 d.155, effective May 21, 2001.
See: 33 N.J.R. 747(a), 33 N.J.R. 1589(b).

In (d), substituted "adult county correctional facility Administrator" for "County Jail Superintendent"; in (f), substituted "shall not" for "may" preceding "be awarded" and deleted "pursuant to N.J.A.C. 10A:5-3.19 Work opportunities" following "inmates".

Petition for Rulemaking.
See: 36 N.J.R. 3597(c).

Case Notes

Murder defendant's 30-year mandatory minimum term of imprisonment was not subject to reduction through application of commutation and work credits. *Merola v. Department of Corrections*, 285 N.J.Super. 501, 667 A.2d 702 (A.D.1995), certification denied.

10A:9-5.3 Forfeiture of commutation credits and work credits

(a) Pursuant to N.J.S.A. 30:4-140 et seq., commutation credits and work credits may be declared to be forfeited as a penalty for misconduct.

1. Forfeitures shall be determined by the Disciplinary Hearing Officer or Adjustment Committee pursuant to

N.J.A.C. 10A:4. All decisions shall be reviewed by the Administrator or designee, who may approve or modify the amount of credits forfeited.

2. In no case shall more than 365 days of commutation and 72 work credits be declared forfeited for any single disciplinary offense. Work credits shall not be forfeited for commission of a prohibited act unless authorized by law.

(b) Pursuant to N.J.S.A. 30:4-16.2, commutation credits shall be declared to be forfeited when any civil action or proceeding filed by an inmate in a New Jersey State court, in which the defendant was represented by the Attorney General or county counsel, has been determined by the court to be frivolous because the civil action was filed:

1. To harass or retaliate against another individual;
2. To disrupt or interfere with the operation of the correctional facility; or
3. For some other malicious purpose.

Amended by R.1992 d.79, effective February 18, 1992.
See: 23 N.J.R. 3721(a), 24 N.J.R. 612(a).

Revised section.

Amended by R.1996 d.557, effective December 2, 1996.

See: 28 N.J.R. 4155(a), 28 N.J.R. 5073(b).

Amended by R.2000 d.143, effective April 3, 2000.

See: 32 N.J.R. 166(a), 32 N.J.R. 1216(a).

In (a), changed N.J.S.A. reference and inserted a reference to work credits in the introductory paragraph, and substituted a reference to the Administrator for a reference to the Superintendent in 1.

Petition for Rulemaking.

See: 32 N.J.R. 3499(a).

Amended by R.2002 d.190, effective June 17, 2002.

See: 34 N.J.R. 1082(a), 34 N.J.R. 2030(a).

In (a)1, deleted "commutation" preceding "credits"; in (a)2, added "and 72 work" after "commutation", also added a sentence; in (b), amended the N.J.S.A. reference and inserted "in a New Jersey State Court" following "inmate".

10A:9-5.4 Forfeiture of commutation credits by parolees

A parolee under the supervision of the State Parole Board is subject to forfeiture of commutation credits in the event the parolee violates a condition of parole.

Amended by R.1992 d.79, effective February 18, 1992.
See: 23 N.J.R. 3721(a), 24 N.J.R. 612(a).

Revised section.

10A:9-5.5 Restoration of forfeited commutation credits

(a) Commutation credits forfeited for a civil action or proceeding filed by an inmate determined to be frivolous by the court shall not be eligible for restoration.

(b) An inmate approaching the expiration of his or her maximum sentence, who is otherwise eligible for the restoration of forfeited commutation credits in accordance with this subchapter, shall be eligible to receive only that portion of the restored commutation credits that allows for all timely release notifications required by law, such as N.J.S.A. 30:4-6.1(a).

(c) The following procedures for restoring forfeited commutation credits apply to all inmates who received charges for acts which occurred on or after May 24, 1979, except as otherwise set forth in this section.

1. Up to 75 percent of the forfeited commutation credits may be restored to inmates over the three year period following the incident which resulted in the loss of commutation credits. The three years must run consecutively, calculated beginning with the date of the incident. Credits shall be restored at the rate of 25 percent for each year which is free of any disciplinary charges with a guilty finding, as follows:

i. If the inmate completes only one year without a charge which results in a guilty finding, he or she will have 25 percent of the forfeited credits restored at the completion of that year.

ii. If the inmate completes any two years of the three year period without a charge which results in a guilty finding, he or she will have 50 percent of the forfeited credits restored at the rate of 25 percent at the completion of each of the respective two years.

iii. If the inmate completes all three years without a charge which results in a guilty finding, the inmate will have 75 percent of the forfeited credits restored at the rate of 25 percent at the completion of each of the respective three years.

Example: An inmate commits a disciplinary infraction on January 1, 1985, and the sanction imposed includes a forfeiture of commutation credits. On January 25, 1985, the inmate commits another disciplinary infraction and is found "guilty." The inmate receives no disciplinary charge between January 25, 1985, to January 25, 1986. The inmate, therefore, has 25 percent of his or her commutation credits restored. The inmate is again free of guilty findings from January 25, 1986, to January 25, 1987, an additional 25 percent of his or her commutation credits is restored. From January 25, 1987 to January 25, 1988, the inmate is again free of guilty finding but is not eligible for an additional 25 percent restoration of commutation time because more than three years have elapsed since January 1, 1985, the date which resulted in the loss of commutation credits.

2. Credits will be restored to the above regardless of the inmate's housing assignment.

(d) An inmate who receives a parole date at any point in the third one year period and has been without a charge which results in a finding of guilt during both the first and second one year periods may, at the discretion of the Administrator, have the commutation credits which the inmate could earn in the third year period restored on a prorated basis.

1. A grant of credits on a prorated basis is applicable only when the parole date falls in the third one year period and only where the inmate has had 50 percent of the forfeited credits already restored.

2. Such action shall be taken only in exceptional cases for good cause shown.

(e) Any inmate who feels that he or she meets the qualifications for restoration must submit an application for restoration of commutation credits to the correctional facility classification officer for consideration at the appropriate time intervals. The classification officer will not act unless an inmate submits an application. A review of the inmate's eligibility on restoration shall be made in accordance with this subchapter by the classification officer and forwarded to the Administrator, who shall make the restoration determination.

Example: An inmate commits a disciplinary infraction on June 30, 1987. The sanction imposed includes a forfeiture of 160 commutation credits. The inmate receives no findings of guilty through the disciplinary process between June 30, 1987 and June 30, 1988. The inmate, therefore, has 40 credits restored on June 30, 1988. The inmate is again free of guilty findings from June 30, 1988 through June 30, 1989 and has another 40 credits restored. The inmate is to be paroled on March 30, 1990. Thus, he or she will only serve nine months (or 3/4) of the third year. The Administrator, in his or her discretion, may restore 75 percent of the 40 credits or 30 credits as of March 30, 1990.

(f) The following procedures for restoring forfeited commutation credits apply to all inmates who received guilty findings from charges for prohibited acts which occurred prior to May 24, 1979, except as otherwise set forth in this section:

1. One hundred percent of the forfeited commutation credits may be restored to an inmate(s) during three consecutive years (one-third restoration per year) which the inmate(s) completes without a charge which results in a finding of guilt.

2. Any inmate who feels that he or she meets the qualifications for restoration of commutation credits lost prior to May 24, 1979, must submit an application for restoration of commutation credits to the classification officer of the correctional facility in which the inmate is currently housed. The classification officer will not consider any restoration of forfeited commutation credits lost prior to May 24, 1979, unless an inmate submits an application. A review of the inmate's eligibility on restoration of credits by the classification officer shall be made in accordance with this subchapter and forwarded to the Administrator, who shall make the restoration determination.

(g) Any inmate under the jurisdiction of the Office of Interstate Services must submit an application for restoration of commutation credits lost to the classification officer of the Office of Interstate Services. A review of the inmate's eligibility on restoration of credits by the classification officer shall be made in accordance with this subchapter and forwarded to the Chief of the Office of Interstate Services who shall make the restoration determination.