

(d) Inmates shall be reviewed and scored on the Reclassification Instrument upon a finding of guilt to a prohibited act(s) when:

1. A sanction imposed by the Disciplinary Hearing Officer includes a referral to I.C.C., except if Administrative Segregation is part of the imposed sanction;
2. A minimum custody status inmate is found guilty of a prohibited act in the highest or high level of the Severity of Offense—Disciplinary Infractions Scale; or
3. Referred by the Administrator.

(e) When a disciplinary sanction includes Administrative Segregation, the inmate shall be reviewed and scored on the Reclassification Instrument prior to release from the Administrative Segregation Unit (see N.J.A.C. 10A:5-3).

New Rule, R.2001 d.425, effective November 19, 2001.

See: 33 N.J.R. 2390(a), 33 N.J.R. 3947(a).

Former N.J.A.C. 10A:9-3.14, Written procedures, recodified to N.J.A.C. 10A:9-3.15.

#### **10A:9-3.15 Written procedures**

(a) Each correctional facility shall develop written classification procedures that are in accordance with this subchapter.

(b) These written procedures shall be reviewed and updated annually and submitted to the Bureau of Correctional Information and Classification Services, Office of Policy and Planning, for review and approval.

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), inserted reference to the Office of Policy and Planning. Recodified from N.J.A.C. 10A:9-3.14 by R.2001 d.425, effective November 19, 2001.

See: 33 N.J.R. 2390(a), 33 N.J.R. 3947(a).

### **SUBCHAPTER 4. ELIGIBILITY CRITERIA FOR REDUCED CUSTODY CONSIDERATION**

#### **10A:9-4.1 Eligibility for reduced custody**

(a) There are six categories of custody status within the New Jersey Department of Corrections:

1. Close custody;
2. Maximum custody;
3. Medium custody;
4. Gang minimum custody;
5. Full minimum custody; and
6. Community custody.

(b) The criteria set forth in this subchapter and the objective classification instrument score shall be applied by

the Institutional Classification Committee (I.C.C.) to determine whether an inmate is eligible for reduced custody consideration.

Amended by R.1990 d.195, effective April 2, 1990.

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

Added reference to I.C.C. in (a).

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.1997 d.122, effective March 17, 1997.

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

Inserted close custody, medium custody, and community custody as additional categories; and deleted (b)1 through (b)3, specifying the available reduced custody options.

Amended by R.2001 d.425, effective November 19, 2001.

See: 33 N.J.R. 2390(a), 33 N.J.R. 3947(a).

In (b), inserted "and the objective classification instrument score" preceding "shall be applied".

#### **Case Notes**

Commissioner of Corrections empowered to reclassify camp inmates whose records reflected convictions of homicide; Commissioner's non-individualized reclassification of prison camp inmates did not implicate prisoner's federally protected liberty interests or require due process type hearing; Commissioner's reclassification was inconsistent with departmental regulations. *Jenkins v. Fauver*, 108 N.J. 239, 528 A.2d 563 (1987).

#### **10A:9-4.2 No right to reduced custody**

A reduction in custody status is a privilege and not a right.

#### **Case Notes**

Under governing regulations, neither the nature of an inmate's conviction, except for those offenses specifically excluded, nor the location of a correctional facility within a residential area alone, may permanently disqualify an inmate from consideration for "full minimum custody status." *Smith v. Dept. of Corrections*, 346 N.J. Super. 24, 786 A.2d 165 (A.D. 2001).

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 A.2d 24.

#### **10A:9-4.3 Custody levels**

(a) Inmates classified as "close custody status" shall be assigned to selected activities such as work and recreation within the confines of the unit under continuous supervision.

(b) Inmates classified as "maximum custody status" shall be assigned to activities within the confines of the correctional facility under continuous supervision.

(c) Inmates classified as "medium custody status" shall be assigned to activities inside the security perimeter of the correctional facility under frequent and direct observation of staff.

(d) Inmates classified as "gang minimum custody status" may be assigned to activities or jobs which routinely require them to move outside the security perimeter of the correctional facility, but on the grounds of the facility and under

continuous supervision of a custody staff member, civilian instructor or other employee authorized to supervise inmates. The time served in gang minimum custody status shall be at the discretion of the Institutional Classification Committee (I.C.C.).

(e) Inmates classified as "full minimum custody status" are those assigned to:

1. Work details, jobs or programs outside the main correctional facility, (on or off the grounds of the facility) with minimal supervision; and/or
2. A satellite unit or minimum security trailer unit.

(f) Inmates must be classified as "community custody status" in order to participate in community release programs (see N.J.A.C. 10A:20) or be assigned to community-based jobs. Community custody status may require periodic supervision in the community as appropriate to circumstances of work or activities. Except to participate in the Electronic Monitoring/Home Confinement Program, full minimum custody status is a prerequisite to obtaining community custody status.

Administrative correction, effective January 27, 1989.  
See: 21 N.J.R. 558(a).

Institutional name change.

Amended by R.1990 d.195, effective April 2, 1990.  
See: 21 N.J.R. 3050(a), 22 N.J.R. 1143(a).

Deleted references to "in-and-out custody status", throughout.  
Amended by R.1997 d.122, effective March 17, 1997.  
See: 29 N.J.R. 80(b), 29 N.J.R. 880(a).

Inserted new (a) and (c); recodified former (a), (b), and (c) as (b), (d), and (e), respectively; deleted former (d) and (e), requiring completion of gang minimum custody to be eligible for minimum custody and requiring full minimum custody status to be eligible for community release programs; in (b), inserted "status" following "custody"; in (d), substituted "under continuous supervision" for "within eyesight" and added the last sentence; and added (f).

Petition for Rulemaking.

31 N.J.R. 3537(a), 31 N.J.R. 4127(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 (d), inserted "perimeter" following "security" and substituted "custody staff member" for "correction officer" preceding "civilian".  
Amended by R.2004 d.180, effective May 3, 2004.

See: 36 N.J.R. 6(b), 36 N.J.R. 2241(b).

In (f), substituted "Except to participate in the Electronic Monitoring/Home Confinement Program, full" for "Full" following "activities".

#### Case Notes

Under governing regulations, neither the nature of an inmate's conviction, except for those offenses specifically excluded, nor the location of a correctional facility within a residential area alone, may permanently disqualify an inmate from consideration for "full minimum custody status." *Smith v. Dept. of Corrections*, 346 N.J. Super. 24, 786 A.2d 165 (A.D. 2001).

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).

For due process purposes, prisoner had no liberty interest in retaining "full minimum custody status" when he was transferred from one correctional facility to another. *Smith v. Dept. of Corrections*, 346 N.J. Super. 24, 786 A.2d 165 (A.D. 2001).

#### 10A:9-4.4 Authority of Classification Committees

(a) Changes in inmate custody levels within a particular correctional facility shall be made by the Institutional Classification Committee (I.C.C.).

1. In an emergency situation, or when additional information is received which negatively affects an inmate's suitability to remain in reduced custody, the inmate's custody level may be increased by order of the Administrator, Associate Administrator, Assistant Superintendent or Director of Custody Operations.

2. Custody level changes initiated due to conditions in (a)1 above must be reviewed and approved by the I.C.C. as soon as is reasonably feasible.

(b) The I.C.C. is authorized, at initial classification, to assign eligible inmates directly to full minimum custody status at Jones Farm and other minimum security correctional facilities without the prerequisite of a successful completion of time in gang minimum custody status.

Amended by R.1990 d.195, effective April 2, 1990.

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

At (a)2., changed time frame to reasonably possible.

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).

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), deleted "whom it transfers or reassigns to another correctional facility or unit" following "status of any inmate"; and in (c), substituted "of a successful completion of time in gang minimum custody" for "service of time required for gang minimum custody".  
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), substituted "Administrator, Associate Administrator" for "Superintendent" in 1, deleted "such" preceding "custody" and inserted "initiated due to conditions in (a)1 above" following "changes" in 2.  
Amended by R.2004 d.180, effective May 3, 2004.

See: 36 N.J.R. 6(b), 36 N.J.R. 2241(b).

Deleted (b); recodified (c) as (b).

#### 10A:9-4.5 Discretion of Institutional Classification

##### Committee (I.C.C.); factors to be considered

(a) In making decisions to reduce an inmate's custody status, the I.C.C. shall take into consideration all relevant factors. These factors may include, but are not limited to:

1. Field account of the present offense;
2. Prior criminal record;
3. Previous incarcerations;

4. Correctional facility adjustment;
5. The objective classification score;
6. Reports from professional and custody staff; and

7. Any reason which, in the opinion of the Administrator and the I.C.C., relates to the best interests of the inmate or the safe, orderly operation of the correctional facility or the safety of the community or public at large.

(b) When considering inmates whose present offense or past history involves arson, escape, assault, murder or sexual offenses, or who have been known to have psychological problems, the I.C.C. shall utilize psychiatric or psychological evaluations which are not more than six months old and which address suitability for reduced custody status.

(c) I.C.C.s shall not be compelled by these criteria to automatically grant a reduction in custody status to every inmate who is eligible for consideration.

(d) I.C.C.s have no authority to grant reductions in custody status to inmates who fall outside the eligibility guidelines unless appropriate requests for rule exemptions are filed and approved, pursuant to N.J.A.C. 10A:1-2, General provisions.

(e) An inmate who has been granted reduced custody status may have his or her custody status increased for any of the following reasons, subject to confirmation by the I.C.C.:

1. On recommendation of the Disciplinary Hearing Officer in connection with disciplinary actions;
2. Upon receipt of a non-permissive detainer;
3. Upon receipt of credible, reliable information from official authorities or informants, that the inmate may be an escape risk;
4. Failure of the inmate to adjust to the social or programmatic needs of the reduced custody unit; and/or
5. Any reason which, in the opinion of the Administrator and I.C.C., relates to the best interests of the inmate or the safe, orderly operation of the correctional facility or the safety of the community or public at large.

(f) The inmate shall receive a written notice of the reason(s) of the I.C.C. for increasing the inmate's custody status within five business days.

Amended by R.1988 d.30, effective January 19, 1988.

See: 19 N.J.R. 1782(b), 20 N.J.R. 194(b).

Added text to (f)6 "or the safety of the public at large or community."

Amended by R.1988 d.106, effective March 7, 1988.

See: 19 N.J.R. 2235(a), 20 N.J.R. 533(a).

Added (b)6.

Amended by R.1990 d.195, effective April 2, 1990.

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

Deleted (a), recodified and added references to I.C.C.

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)6 and (e)6.

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

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

In (a), deleted "which, in their professional judgment, bear upon the inmate's suitability for reduced custody status" following "all relevant factors"; inserted new (a)5; recodified former (a)5 and (a)6 as (a)6 and (a)7; deleted (e)5, providing that serious health problems are reason for increasing custody status; and recodified former (e)6 as (e)5. Amended by R.2002 d.190, effective June 17, 2002.

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

Substituted "I.C.C." for "Institutional Classification Committee" and "Administrator" for "Superintendent" throughout; (f), substituted "business" for "working" following "five".

#### Case Notes

Regulation that allows prison superintendent and Institutional Classification Committee to increase custody status of an inmate who has been granted reduced custody status does not give superintendent and committee unbridled discretion to make that determination; discretion must be circumscribed by the factors, as listed in another regulation, that govern custody status decisions. *Smith v. Dept. of Corrections*, 346 A.2d 24.

Under governing regulations, neither the nature of an inmate's conviction, except for those offenses specifically excluded, nor the location of a correctional facility within a residential area alone, may permanently disqualify in inmate from consideration for "full minimum custody status." *Smith v. Dept. of Corrections*, 346 A.2d 24.

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 A.2d 24.

#### 10A:9-4.6 Criteria for consideration for gang minimum custody status and full minimum custody status

(a) Except as provided in N.J.A.C. 10A:9-4.7 and 4.8, inmates who meet the criteria set forth in this section are eligible to be considered for full minimum custody status preceded by the successful completion of a period of time in gang minimum custody status. Pursuant to N.J.A.C. 10A:9-4.3(d), the amount of time served in gang minimum custody status shall be at the discretion of the Institutional Classification Committee (I.C.C.).

(b) Inmates who have had their contact visit privileges terminated due to a finding of guilt to a Zero Tolerance Drug/Alcohol Policy related prohibited act pursuant to N.J.A.C. 10A:4-5.1 and 5.2 shall not be eligible for consideration for any custody status lower than medium custody until after contact visit privileges are reinstated. See N.J.A.C. 10A:18-6.20.

(c) As a condition of eligibility for consideration of any custody status lower than medium custody, inmates who are assigned to a therapeutic community (T.C.) or treatment program must accept, participate and successfully complete the assignment.

(d) As a condition of eligibility for consideration of any custody status lower than medium custody, inmates shall be required to complete the clinical screening for substance use disorder treatment.

(e) I.C.C.s are not obligated to advance an inmate from gang minimum custody status to full minimum custody status even though the inmate qualifies for consideration under the criteria set forth in this section.

(f) When considering inmates for reduced custody status who are serving ordinary or extended prison sentences with no mandatory minimum, the I.C.C. shall take into account all presentence jail credits awarded by the court on the instant offense. Inmates must have served the following number of years of their sentences in medium or higher custody status to be eligible to be considered for a reduced custody status.

<u>Length of Sentence</u>	<u>Years in Medium and Higher Custody Status</u>
Over 30 years to life	5
Over 25 and up to 30 years	4
Over 20 and up to 25 years	3
Over 15 and up to 20 years	2
Over 10 and up to 15 years	1
10 years and under	None

(g) Inmates sentenced to serve mandatory minimum terms of 24 months or less are eligible to be considered for gang minimum custody status and full minimum custody status immediately following admission to a correctional facility.

(h) Inmates returned to custody for violation of parole who were sentenced under the No Early Release Act (NERA) at N.J.S.A. 2C:43-7.2 shall be ineligible for custody status lower than medium custody for nine months following admission to a correctional facility. NERA parole violators with 24 months or less to serve may be considered for reduced custody status after the initial nine months of custody, and those with more than 24 months to serve may be considered for reduced custody after serving one half of the balance of time to be served.

(i) Inmates who were considered for reduced custody status prior to April 2, 1990, and were sentenced to serve mandatory minimum terms of more than 24 months are eligible to be considered for gang minimum custody status and full minimum custody status when the following service of time has been met. Any presentence jail credit awarded on the instant offense shall be counted. No credit toward this requirement is to be given on any prior sentence which an inmate may currently be serving.

1. If the mandatory minimum is one-half or greater than one-half of the term imposed, the inmate shall serve one-half of the mandatory minimum. (EXAMPLE: If the term is 20 years and the mandatory minimum is 10 years, the inmate must serve five years.)

2. If the mandatory minimum is less than one-half of the term imposed, the inmate shall serve one-third of the mandatory minimum. (EXAMPLE: If the term is 20 years and the mandatory minimum is 8 years, the inmate must serve two years and eight months.)

3. However, in any instance where the application of (i)2 above would result in an inmate being eligible for consideration in less time than if he or she had no mandatory minimum, then the formula set forth in (f) above shall be applied such that the greater amount of time shall be spent in medium or higher custody status. (EXAMPLE: If the inmate has a 20 year term and a mandatory minimum of three years, he or she shall serve the two years required in (f) above instead of the one year which would be required under (i)2 above.)

(j) Inmates who were considered for reduced custody status on or after April 2, 1990, and were sentenced to serve mandatory minimum terms of more than 24 months are eligible to be considered for gang minimum custody status and full minimum custody status when the inmate has served one-half of the mandatory minimum or is within 24 months of the expiration of the mandatory minimum term, whichever is less. (EXAMPLE 1: If the inmate has a mandatory minimum of three years, one-half of three years is equal to one year and six months. However, after the inmate serves one year on his or her three year mandatory minimum he or she is within 24 months of the expiration date. The inmate is therefore eligible for reduced custody status after having served only one year in medium or higher custody status because one year is less. EXAMPLE 2: If the inmate has a mandatory minimum of five years, one-half of five years is two and one-half years. However, the inmate must serve three years prior to being within 24 months of the expiration date. The inmate is therefore eligible for reduced custody after having served only two and one-half years in medium or higher custody status because two and one-half years is less.) Any presentence jail credit awarded on the instant offense shall be counted. Time served on a prior sentence may not be applied to satisfy this requirement.

(k) In any instance where the application of (j) above would result in an inmate being eligible for consideration in less time than if he or she had no mandatory minimum, then the formula set forth in (f) above shall be applied such that the greater amount of time shall be spent in medium or higher custody status. (EXAMPLE: If the inmate has a 20 year term and a mandatory minimum of three years, he or she shall serve the two years required in (f) above instead of the one and one-half years which would be required under (j) above.)

(l) When considering inmates with indeterminate sentences for reduced custody status, the I.C.C. shall take into account all presentence jail credits awarded by the court on the instant offense.

(m) Inmates with indeterminate sentences must have served the following number of months of their sentences to be eligible to be considered for a reduced custody status:

<u>Length of Sentence</u>	<u>Months in Medium or Higher Custody Status</u>
30 years to life	42
25 through 29 years	30
20 through 24 years	18
15 through 19 years	6
Up to 15 years	None

(n) Inmates with detainers from jurisdictions other than New Jersey shall be eligible to be considered for reduced custody status provided:

1. The detainers for adjudicated offenses are for concurrent sentences which do not exceed the maximum of the term currently being served; or

2. An inmate has applied under the Interstate Agreement on Detainers (I.A.D.) for disposition of the detainer and the inmate is not brought to trial within 180 calendar days from the date of the prosecuting authority's receipt of Form II and no court-ordered continuances were granted; or

3. A prosecutor has applied under the Interstate Agreement on Detainers (I.A.D.) for disposition of the detainer and the inmate is not brought to trial within 120 calendar days from the date of the inmate's arrival at the receiving state and no court ordered continuances were granted.

(o) Inmates with out-of-State or Federal open charge(s) regardless of the date of offense for the following serious offense(s) shall not be eligible for reduced custody status:

1. Homicide;
2. Maintaining or operating a CDS manufacturing facility;
3. Arson;
4. Sexual offense;
5. Kidnapping;
6. Escape; and/or
7. Carjacking.

(p) Inmates with out-of-State or Federal open charge(s) for the following offense(s) shall not be eligible for reduced custody status if the date of the offense(s) is within five years of the consideration:

1. Distribution/manufacture of CDS offense of the 1st or 2nd degree;
2. Offense of an assaultive nature;
3. Burglary of the 2nd degree;
4. Weapons offense;

5. Robbery; and/or
6. Terroristic threat offense.

(q) An open charge exceeding five years for (p) above shall not be considered a bar for reduced custody consideration.

(r) Inmates who have a New Jersey detainer(s) are eligible to be considered for gang minimum custody status and full minimum custody status unless the detainer(s) is for one of the following:

1. Homicide;
2. Arson;
3. Manufacturing, distribution or dispensing CDS offense if 1st or 2nd degree crimes;
4. Sexual offense;
5. Offense of an assaultive nature as defined in N.J.S.A. 2C:12b (Aggravated Assault) or N.J.S.A. 2A:90-1 et seq.;
6. Kidnapping as defined in N.J.S.A. 2C:13 or 2A:118-1 et seq.;
7. Burglary as defined in N.J.S.A. 2C:18-2b and 2A:94-1 et seq.;
8. Escape;
9. Bail jumping as defined in N.J.S.A. 2C:29-7 and 2A:15-1 et seq.;
10. Prohibited weapons and devices as defined in N.J.S.A. 2C:39-3, 4, 5, 7, 9, 10 and 2A:151;
11. Robbery as defined in N.J.S.A. 2C:15-1 and 2A:141.1 et seq.;
12. Terroristic threats as defined in N.J.S.A. 2C:12-3;
13. Maintaining or operating a controlled dangerous substance production facility as defined in N.J.S.A. 2C:35-4; and/or
14. Carjacking as defined in N.J.S.A. 2C:15-2.

(s) Inmates with a New Jersey open charge(s) regardless of the date of the offense for the following offense(s) shall not be eligible for reduced custody status:

1. Homicide;
2. Maintaining or operating a CDS manufacturing facility;
3. Arson;
4. Sexual offense;
5. Kidnapping;
6. Escape; and/or
7. Carjacking.

(t) Inmates with a New Jersey open charge(s) for the following offenses shall not be eligible for reduced custody status if the date of the offense(s) is within five years of consideration:

1. Manufacturing, distributing or dispensing CDS offense if 1st or 2nd degree crimes;
2. Offense of an assaultive nature;
3. Burglary of the 2nd degree;
4. Weapons offense;
5. Robbery; and/or
6. Terroristic threat offense.

(u) An open charge(s) exceeding five years for (t) above shall not be considered a bar for reduced custody consideration.

(v) Foreign born inmates, excluding U.S. territories and possessions, shall be eligible to be considered for reduced custody status provided the United States Immigration and Naturalization Service (U.S.I.N.S.) has not responded to referrals within 120 calendar days.

(w) Inmates who have escaped or attempted escape and who are not excluded from reduced custody pursuant to N.J.A.C. 10A:9-4.8(e) shall be eligible for reduced custody as follows:

1. If an inmate is presently serving a sentence for escape or attempted escape, or has been found guilty of the prohibited act of escape or attempted escape from inside a medium or higher security facility or county jail, within or outside New Jersey, he or she shall be eligible to be considered for gang minimum custody status and full minimum custody status when five years have elapsed since the date of apprehension of the escape or the date of attempted escape and he or she is otherwise eligible according to the criteria set forth in this subchapter.

2. If an inmate is presently serving a sentence for escape or attempted escape, or has been found guilty of the prohibited act of escape or attempted escape from a minimum security facility, detail or unit, within or outside New Jersey, he or she shall be eligible to be considered for gang minimum custody status and full minimum custody status when two years have elapsed from the date of apprehension of the escape or two years from the date of the attempted escape and the inmate is otherwise eligible according to the criteria set forth in this subchapter.

Amended by R.1987 d.156, effective April 6, 1987.

See: 19 N.J.R. 178(c), 19 N.J.R. 534(c).

Added (d); old (d) through (j) renumbered (e) through (k).

Amended by R.1990 d.195, effective April 2, 1990.

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

Added new (f) and (g), recodified and deleted references to "in-and-out custody status".

Administrative correction to (f).

See: 22 N.J.R. 1378(a).

Administrative correction to (k)3: changed (j) below to (l) below.

See: 22 N.J.R. 2969(a).

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

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

Revised (e), (f), (i); added (k)4; revised (l)3.

Amended by R.1994 d.197, effective April 18, 1994.

See: 26 N.J.R. 728(a), 26 N.J.R. 1658(b).

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

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

Substantially amended section.

Petition for Rulemaking.

31 N.J.R. 1385(a).

Petition for Rulemaking.

Amended by R.2002 d.99, effective April 1, 2002.

See 33 N.J.R. 4194(a), 34 N.J.R. 1426(a).

Added new (b) through (d) and recodified existing (b) through (s) as (e) through (v); amended paragraph designation references throughout.

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

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

Rewrote the section.

Amended by R.2003 d.235, effective June 16, 2003.

See: 35 N.J.R. 1185(a), 35 N.J.R. 2647(a).

Rewrote the section.

#### **10A:9-4.7 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 and has no prior adult convictions for sexual offenses, or an inmate who is presently serving a sentence for a nonsexual offense but who has a prior adult conviction for one count of 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; and

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.

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.

31 N.J.R. 1385(a).

Petition for Rulemaking.

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."

#### **10A:9-4.8 Not eligible to be considered for reduced custody status**

(a) Inmates serving sentences for the offenses described below are not eligible to be considered for any type of reduced custody status, except those inmates housed at the Adult Diagnostic Treatment Center (A.D.T.C.) described in N.J.A.C. 10A:9-4.7(c)3.

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

(c) An inmate who presently is serving a sentence for one count of a sexual offense and who has a prior adult conviction for one count of a sexual offense under the laws of this State, any other state or the United States; an inmate who presently is serving a sentence for more than one count of a sexual offense under the laws of this State, any other state or the United States; or an inmate who presently is serving a sentence for a nonsexual offense and has prior adult convictions for more than one count of a sexual offense under the laws of this State, any other state of the United States, is not eligible for reduced custody.

1. For purposes of this subchapter, a sexual offense shall include a conviction obtained in a court of competent jurisdiction of another state, or of the Federal government, or a conviction obtained under the following New Jersey Statutes:

2C:14-2 Sexual assault; aggravated sexual assault;

2C:14-3 Aggravated criminal sexual contact; criminal sexual contact;

2C:24-4 Endangering welfare of children where the official version of the crime indicates that the inmate engaged in sexual contact pursuant to 2C:24-4(a) or committed an offense under 2C:24-4(b)(3, 4 or 5);

2C:5-1 Criminal attempt to commit any offense under 2C:14-2, 14-3, 23-4;

- 2C:5-2 Conspiracy to commit an offense under 2C:14-3, 24-4;
- 2C:47-1 Et seq. any conviction obtained under this section;
- 2A:86-3 Abduction of female under age 18 for purpose of marriage or carnal abuse;
- 2A:90-2 Assault with intent to commit rape or sodomy, or to carnally abuse a female under the age of 16, with or without her consent;
- 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.

(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 instances of escape or attempted escape or a combination of either through convictions or prohibited acts is not eligible to be considered for any type of reduced custody.

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

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).

#### 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 A.2d 24.

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 A.2d 24.

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:9-4.9 Assignment of inmates to satellite units, except Jones Farm

(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.

(d) At the time of initial placement of an inmate in the correctional system, the Inter-Institutional Classification Committee (I.I.C.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."

## 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 department, 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

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 (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.

(h) Any inmate housed at a residential community release agreement program must submit an application for restoration of commutation credits to the Administrator of the regional correctional facility with responsibility for the inmate. The classification officer of that correctional facility shall review the 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.

(i) Any inmate serving a State prison sentence in an adult county correctional facility must submit an application for restoration of commutation credits to the Administrator of the Central Reception and Assignment Facility (CRAF). The classification officer of that facility shall review the 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.

Amended by R.1991 d.346, effective July 1, 1991.  
See: 23 N.J.R. 1261(a), 23 N.J.R. 2043(a).

Amended to permit an inmate, who has forfeited commutation time as a result of a disciplinary charge and will reach the expiration of his or her maximum sentence in the third year after the loss of commutation time and has been free of disciplinary charges for both the first and second years, to have the commutation credits which he or she could earn in the third year restored, on a prorated basis, at the discretion of the Superintendent.

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.1993 d.636, effective December 6, 1993.  
See: 25 N.J.R. 4553(a), 25 N.J.R. 5476(a).  
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.1999 d.165, effective May 17, 1999.  
See: 31 N.J.R. 708(b), 31 N.J.R. 1335(a).

Rewrote the section.  
Amended by R.2001 d.222, effective July 2, 2001.

See: 33 N.J.R. 1043(a), 33 N.J.R. 2297(a).

Inserted a new (b), recodified former (b) as (c), and inserted “, except as otherwise set forth in this section” following “May 24, 1979” in the introductory paragraph; recodified former (c) and (d) as (d) and (e); recodified former (e) as (f) and inserted “, except as otherwise set forth in this section” following “May 24, 1979” in the introductory paragraph; recodified former (f) through (h) as (g) through (i).

Amended by R.2003 d.324, effective August 4, 2003.

See: 35 N.J.R. 1761(a), 35 N.J.R. 3558(b).

Rewrote (b).

#### **10A:9-5.6 Work credits for inmates housed in adult county correctional facilities**

(a) State sentenced inmates who are being housed in adult county correctional facilities shall be credited with one day work credit for every five days worked beginning on the 16th day after sentencing. All inmates confined in adult county correctional facilities are charged with the responsibility to keep their cells clean; such assignments shall be considered as five day per week jobs. Work credits prior to sentencing must be certified by county authorities.

(b) Inmates that are parole violaters without additional charges who are held in an adult county correctional facility on a parole warrant will receive work credits beginning on the 16th day after they have been in custody.

(c) Inmates that are Intensive Supervision Program (I.S.P.) violaters who are in adult county correction facilities, will receive work credits beginning on the 16th day after they have been in custody.

(d) Parolees housed in adult county correctional facilities on additional charges and sentenced on additional charges may receive work credits beginning on the 16th day after sentencing. If an inmate’s parole is revoked prior to sentencing, the effective date on which to begin work credits shall be the date of the parole revocation.

(e) Parolees serving county jail sentences in conjunction with parole violations may receive work credits beginning on the date of parole revocation.

(f) Inmates with approved parole dates who are transferred to adult county correctional facilities prior to parole shall receive work credits as if the inmates were still assigned to a five day or seven day per week job in a State correctional facility. Inmates in minimum custody status at the time of transfer shall continue to receive compensation for that status during their stay in the adult county correctional facility in accordance with N.J.S.A. 30:4-92.

Amended by R.1987 d.332, effective August 17, 1987.

See: 19 N.J.R. 843(a), 19 N.J.R. 1560(b).

Deleted text in (b) and substituted new; deleted text in (d) “upon completion of . . . has been revoked” and substituted “on the date of parole revocation”.

Amended by R.1988 d.332, effective July 18, 1988.

See: 20 N.J.R. 879(b), 20 N.J.R. 1716(a).

Added new (c); redesignated existing (c)-(e) as (d)-(f).

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.1999 d.340, effective October 4, 1999.

See: 31 N.J.R. 1848(a), 31 N.J.R. 2891(b).

In (d), deleted “and wages” preceding “beginning”, and deleted “wages and” following “begin”, and in (e), deleted “wages and” following “receive”.

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

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

Inserted “adult” preceding “county correction facility” throughout.

#### **10A:9-5.7 Reports of earned credits**

Regular reports of earned credits should be forwarded to the parent correctional facility when inmates are housed in county correctional facilities or in half-way house assignments.

Recodified from 10A:9-5.8 and amended by R.1997 d.122, effective March 17, 1997.

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

Deleted “at V.R.U.” following “inmates are housed”. Section was “Inmates in Vroom Readjustment Unit (V.R.U.)”.

#### **10A:9-5.8 (Reserved)**

Recodified to 10A:9-5.7 by R.1997 d.122, effective March 17, 1997.

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

### **SUBCHAPTER 6. INTER-INSTITUTIONAL CLASSIFICATION COMMITTEE (I.I.C.C.)**

#### **10A:9-6.1 Responsibilities of the Inter-Institutional Classification Committee (I.I.C.C.)**

(a) The I.I.C.C. shall be responsible for:

1. The initial custody status and correctional facility assignments of male inmates who have been committed to the custody of the Commissioner, Department of Corrections;

2. The custody status and correctional facility assignment of male parole violaters, escapees and Interstate Corrections Compact transferees; and

3. Recommending inmates at the Central Reception Assignment Facility (CRAF) who are considered appropriate for Protective Custody (see N.J.A.C. 10A:5).

Administrative correction, effective January 27, 1989.

See: 21 N.J.R. 558(a).

Institutional name change.

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

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

Revised (b).

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

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

In (a), substituted “correctional facility, of male inmates” for “facility, of adult male inmates” and “custody of the Commissioner, Department of Corrections” for “Garden State Reception and Youth Correctional Facility by the Courts”; rewrote (b); in (c)1, substituted “Division of Operations” for “Prison Complex”; in (c)5, substituted “Confirm all transfers to or from” for “Review assignments to Vroom” and deleted an N.J.A.C. reference; in (c)7, deleted reference to transfers to Vroom Readjustment Unit; rewrote (c)8; and deleted (d), relating to assignment of female inmates.

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

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

Rewrote (a); in (c), inserted "adult" preceding "county" and substituted "correctional facilities" for "jails" in 4 and deleted "Institutional Classification Committee" preceding "I.C.C." in 8.

Amended by R.2004 d.180, effective May 3, 2004.

See: 36 N.J.R. 6(b), 36 N.J.R. 2241(b).

Rewrote the section.

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

(a) An Administrator or designee shall serve as Chairperson of the I.I.C.C.

(b) Two Associate Administrators or Assistant Superintendents appointed by the Director, Division of Operations, shall serve as members of the I.I.C.C. on a quarterly basis.

(c) A classification officer and a representative from the Division of Programs and Community Services shall serve as members of the I.I.C.C.

Administrative correction, effective January 27, 1989.

See: 21 N.J.R. 558(a).

Institutional name change.

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 (a), changed official serving as Chair and deleted provision specifying other members of the I.I.C.C.; and rewrote (b).

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

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

Rewrote (a); in (b), inserted "Associate Administrators or" following "two".

Amended by R.2004 d.180, effective May 3, 2004.

See: 36 N.J.R. 6(b), 36 N.J.R. 2241(b).

Added (c).

### 10A:9-6.3 Criteria for assignment of inmates

(a) Decisions regarding the degree of custody required and the correctional facility assignment for inmates shall be made by the I.I.C.C. while the inmate is in the initial classification process. These decisions shall be based on:

1. Length of sentence;
2. Type of offense;
3. Age of inmate;
4. Previous history;
5. Review of pertinent presentence investigation report documents;
6. The objective classification score;
7. The security level that matches the inmate's scored custody status; and
8. The Department of Corrections housing security level designation assigned to each correctional facility.

Administrative correction, effective January 27, 1989.

See: 21 N.J.R. 558(a).

Institutional name change.

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.1997 d.122, effective March 17, 1997.

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

Inserted (a)6 through (a)8; and deleted (b) through (k), providing criteria for assignment to specified correctional facilities.

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), rewrote the introductory paragraph.

### 10A:9-6.4 (Reserved)

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

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

In (a), deleted "within the Prison Complex" following "another correctional facility"; and in (b), deleted "from the Prison and/or Youth Complex" following "sentenced inmates".

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), inserted "adult" preceding "county" and substituted "correctional facilities" for "jails".

Repealed by R.2004 d.180, effective May 3, 2004.

See: 36 N.J.R. 6(b), 36 N.J.R. 2241(b).

Section was "Transfers".

### 10A:9-6.5 (Reserved)

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

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

In (a), amended N.J.A.C. reference; and in (b), amended references to relevant officials.

Amended by R.2001 d.425, effective November 19, 2001.

See: 33 N.J.R. 2390(a), 33 N.J.R. 3947(a).

In (e), inserted "evaluated on the Reclassification Instrument at the receiving facility as soon as possible and" following "transfers shall be"; substituted references to Administrators for references to Superintendents throughout.

Amended by R.2002 d.65, effective March 4, 2002.

See: 33 N.J.R. 3857(a), 34 N.J.R. 1027(a).

In (b), inserted "or designee" following "either of the Assistant Commissioner" and deleted the third sentence; substituted "Administrator" for "Superintendent" throughout.

Repealed by R.2004 d.180, effective May 3, 2004.

See: 36 N.J.R. 6(b), 36 N.J.R. 2241(b).

Section was "Emergency transfers".

## SUBCHAPTER 7. SPECIAL CLASSIFICATION COMMITTEE (S.C.C.)

### 10A:9-7.1 Responsibilities of the Special Classification Committee (S.C.C.)

The Special Classification Committee (S.C.C.) shall be responsible for considering any inter-complex transfers.

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

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

Substituted "any inter-complex transfers" for list of specified transfers.

### 10A:9-7.2 Composition of the Special Classification Committee (S.C.C.)

(a) A Director of the Division of Operations shall serve as permanent Chairperson of the S.C.C. In addition, the S.C.C. shall be made up of a staff member from the Commissioner's Office and an Administrator, Associate Administrator or Assistant Superintendent from the Prison and Youth Complexes.

(b) The Administrator, Associate Administrator or the Assistant Superintendent of the Adult Diagnostic and Treatment Center (A.D.T.C.) shall participate as a member when transfer cases involving the A.D.T.C. are considered by the S.C.C.

(c) The Administrators, Associate Administrators or Assistant Superintendents who represent the Prison and Youth Correctional Complexes on the S.C.C. shall alternate annually with other Administrators, Associate Administrators or Assistant Superintendents of their respective Complexes so that their terms of service shall be no longer than one year at a time.

(d) An Administrator may designate a substitute member from a level not lower than Assistant Superintendent to represent his or her correctional facility at a S.C.C. meeting in the event the Administrator is unable to attend.

(e) The S.C.C. shall meet at least once a month on a date that is designated by the Chairperson at alternate sites so that no individual member is unduly inconvenienced.

Amended by R.1997 d.122, effective March 17, 1997.  
See: 29 N.J.R. 80(b), 29 N.J.R. 880(a).

In (a), changed official serving as Chair; and in (b), deleted reference to the Deputy Director of the Division of Juvenile Services and substituted "the A.D.T.C." for "their correctional facilities".  
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), deleted "Special Classification Committee" preceding "S.C.C." and in (a) through (c), substituted "Administrator, Associate Administrator" for "Superintendent"; in (d), substituted "An Administrator" for "A Superintendent" and "the Administrator" for "he or she".

#### 10A:9-7.3 Procedure for initiating transfer requests

(a) Requests for transfer to another Complex within the Department of Corrections may be initiated by the inmate or by the Administrator of the correctional facility in which the inmate is confined.

(b) Requests for transfer also may be initiated by the Commissioner or designee or the Assistant Commissioner of the Division of Operations.

(c) All requests for transfer and the reason(s) therefor shall be submitted, in writing, to the appropriate Institutional Classification Committee (I.C.C.). No request shall be considered without an accompanying statement of reasons.

(d) Requests for transfer received from attorneys or other third parties on behalf of an inmate shall not be considered. All third party individuals making such requests shall be advised that the inmate must initiate the request. However, third parties shall be advised that they may submit written comments to the appropriate I.C.C. in conjunction with an inmate request, all of which shall be considered by the I.C.C. and the Special Classification Committee (S.C.C.) when they review the inmate's request.

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), changed officials who may initiate requests for transfer.

Amended by R.2002 d.65, effective March 4, 2002.

See: 33 N.J.R. 3857(a), 34 N.J.R. 1027(a).

In (a), substituted "Administrator" for "Superintendent"; in (b), substituted "or designee" for "Chief of Staff".

#### 10A:9-7.4 Procedure for reviewing nonemergency transfer requests

(a) All requests for nonemergency transfers shall be submitted first to the Institutional Classification Committee (I.C.C.) at the correctional facility where the inmate is housed.

(b) When the request is initiated by the Administrator or any person other than the inmate authorized by N.J.A.C. 10A:9-7.3, the I.C.C. shall send a written notice to the inmate advising that a transfer request has been made and that the request will be considered at the next regularly scheduled I.C.C. meeting. The I.C.C. shall also advise the inmate that he or she may submit written comments to the I.C.C. regarding the proposed transfer.

(c) The I.C.C. may direct that the inmate appear at the I.C.C. meeting if the Committee determines that an appearance is necessary.

(d) After considering all information which the I.C.C. shall deem relevant, the Committee shall render a decision to recommend or deny the transfer request. A notice of decision and a statement of reasons therefore shall be sent to the inmate and to the Administrator.

(e) If the I.C.C. recommends approval of the transfer request, the Administrator shall submit the recommendation to the Special Classification Committee (S.C.C.) with a full set of classification materials and any other information upon which the recommendation was made. The Administrator shall also submit a letter to the Chairperson of the S.C.C. which shall state whether the Administrator supports the I.C.C. recommendation and the reasons therefor.

(f) The S.C.C. shall consider all information submitted at the next regularly scheduled S.C.C. meeting and shall determine whether the requested transfer shall be approved.

1. The inmate shall not appear at the S.C.C. meeting.

2. The S.C.C. shall determine the appropriate correctional facility to which the inmate shall be assigned if the transfer is approved.

(g) The S.C.C. shall send written notification of the S.C.C. decision and the reasons therefor to:

1. The Administrator;

2. The authorized person who made the request; and

3. The I.C.C.

(h) The I.C.C. shall give written notice of the final decision to the inmate.

Amended by R.2002 d.190, effective June 17, 2002.  
See: 34 N.J.R. 1082(a), 34 N.J.R. 2030(a).  
Rewrote the section.

#### **10A:9-7.5 Procedure for reviewing emergency transfer requests**

(a) Whenever, in the opinion of the Administrator of the correctional facility in which the inmate is housed, an immediate transfer is necessary, the Administrator shall notify the Assistant Commissioner or Director, Division of Operations.

(b) With the verbal approval either of the Assistant Commissioner or designee, or the Director, the transfer shall be made as soon as possible.

(c) Form 852—I Authorization for Emergency Transfer shall be utilized for disciplinary or administrative transfers of an emergency nature. Two copies of Form 852—I shall be forwarded to the individual from whom verbal approval was secured within three business days of the verbal approval.

(d) In determining whether an emergency transfer is necessary, the Administrator shall consider the following factors, but is not limited to these factors:

1. The safety and welfare of the inmate;
2. The safety of other inmates and staff; and
3. The safe, orderly and secure operation of the correctional facility.

(e) The Administrator shall refer the emergency transfer of the inmate to the Institutional Classification Committee (I.C.C.) for consideration at the next regularly scheduled I.C.C. meeting. The I.C.C. shall make its review and recommendation and shall then refer the transfer to the Special Classification Committee (S.C.C.).

(f) When the S.C.C. confirms or fails to confirm the transfer, it shall notify in writing the following:

1. The inmate;
2. The Administrator; and
3. The I.C.C.

(g) A copy of the written notice shall be placed in the inmate's file.

(h) If the S.C.C. fails to confirm the transfer, the correctional facility to which the inmate was transferred shall make arrangements to return the inmate to his or her previous correctional facility as soon as possible.

Amended by R.1997 d.122, effective March 17, 1997.  
See: 29 N.J.R. 80(b), 29 N.J.R. 880(a).

In (a) and (b), changed officials to be notified of need of transferred and who may approve transfers.

Amended by R.2002 d.65, effective March 4, 2002.

See: 33 N.J.R. 3857(a), 34 N.J.R. 1027(a).

In (b), inserted "or designee" following "Commissioner" and deleted the second sentence; substituted "Administrator" for "Superintendent" throughout.

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), substituted "business" for "working" following "three"; in (e), substituted "the" for "its" and inserted "I.C.C." following "scheduled".

#### **10A:9-7.6 Criteria for reviewing transfer requests**

(a) In reviewing requests for transfer or reassignment to a correctional facility in another Complex, the Institutional Classification Committee (I.C.C.) and the Special Classification Committee (S.C.C.) shall consider all relevant factors including, but not limited to:

1. Disciplinary reports;