

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".

Amended by R.2007 d.42, effective February 5, 2007.
 See: 38 N.J.R. 4389(a), 39 N.J.R. 489(a).

Added new (a)5 and (a)8; and recodified former (a)5, (a)6, and (a)7 as (a)6, (a)7, and (a)9, respectively.

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 N.J. Super. 24, 786 A.2d 165 (A.D. 2001).

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 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).

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.).

1. Inmates housed at Edna Mahan Correctional Facility for Women (EMCF) who meet the criteria set forth in this section are eligible to be considered for full minimum custody status without the prerequisite of a successful completion of a period of time in gang minimum custody status.

(b) Inmates who have had their contact visit privileges terminated due to a finding of guilt to a prohibited act identified in a zero tolerance policy as established in N.J.A.C. 10A:4-5.1 and 12 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 eligible for reduced custody status, which shall be calculated as specified in (i) below.

(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 not be eligible to be considered for reduced custody status unless the following provisions apply:

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.

(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).

Petition for Rulemaking.
See: 36 N.J.R. 4330(b).

10A:9-5.6 Work credits for State-sentenced 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 violators 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.) violators who are in adult county correctional 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.
Amended by R.2007 d.379, effective December 17, 2007.

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

Section was “Work credits for inmates housed in adult county correctional facilities”.

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. INSTITUTIONAL CLASSIFICATION
RECEPTION COMMITTEE (I.C.R.C.)

10A:9-6.1 Responsibilities of the Institutional Classification Reception Committee (I.C.R.C.)

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

1. The initial custody status and correctional facility assignments of 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 violators, 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.

Amended by R.2007 d.379, effective December 17, 2007.
See: 39 N.J.R. 2445(a), 39 N.J.R. 5340(b).

Section was "Responsibilities of the Inter-Institutional Classification Committee (I.I.C.C.)". In the introductory paragraph of (a), substituted "I.C.R.C." for "I.I.C.C."; and in (a)1, deleted "male" preceding "inmates".

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

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

(b) A Classification Department representative shall serve as a member of the I.C.R.C.

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

Amended by R.2007 d.379, effective December 17, 2007.
See: 39 N.J.R. 2445(a), 39 N.J.R. 5340(b).

Section was "Composition of the Inter-Institutional Classification Committee (I.I.C.C.)". In (a), substituted "I.C.R.C." for "I.I.C.C."; rewrote (b); and in (c), deleted "classification officer and a" preceding "representative" and substituted "a member of the I.C.R.C." for "members of the I.I.C.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.C.R.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 criminal and/or correctional facility 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;
8. The Department of Corrections housing security level designation assigned to each correctional facility;
9. Current psychological and/or psychiatric reports; and
10. Other professional and/or administrative reports.

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.