

New Rule, R.2001 d.425, effective November 19, 2001.
 See: 33 N.J.R. 2390(a), 33 N.J.R. 3947(a).
 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)2.

10A:9-2.10 Current Detainer/Open Charge Scale

(a) The following Detainer/Open Charge Scale shall be used to assess an inmate's current detainers or open charges and to assign points on the Initial and Reclassification Instruments:

1. Permissible detainers or open charges are detainers or open charges that do not preclude an inmate from being assigned to reduced custody. Inmates with permissible detainers/open charges shall receive zero points.
2. Non-permissible detainers or open charges are detainers or open charges that preclude an inmate from being assigned to reduced custody pursuant to N.J.A.C. 10A:9-4.6. Inmates with non-permissible detainers/open charges shall receive four points.

New Rule, R.2001 d.425, effective November 19, 2001.
 See: 33 N.J.R. 2390(a), 33 N.J.R. 3947(a).

10A:9-2.11 Severity of Offense—Disciplinary Infractions Scale

(a) The Severity of Offense—Disciplinary Infractions Scale shall be used to assess an inmate's most serious disciplinary infraction received in the previous 12 months. The Severity of Offense—Disciplinary Infraction Scale has the following levels:

1. Highest;
2. High;
3. Moderate;
4. Low moderate; and
5. Low.

(b) The following prohibited acts appear at the highest level of the Severity of Offense—Disciplinary Infractions Scale. Inmates found guilty of any of the below listed disciplinary infractions shall receive seven points on the Reclassification Instrument.

1. *.001 killing;
2. *.003 assaulting any person with a weapon;
3. *.007 hostage taking;
4. *.012 throwing bodily fluid at any person or otherwise purposely subjecting such person to contact with a bodily fluid;
5. *.050 sexual assault;
6. *.101 escape;
7. *.102 attempting or planning escape;

8. *.151 setting a fire;

9. *.201 possession or introduction of an explosive, incendiary device or any ammunition;

10. *.215 possession with intent to distribute or sell prohibited substances such as drugs, intoxicants or related paraphernalia;

11. *.216 distribution or sale of prohibited substances such as drugs, intoxicants or related paraphernalia;

12. *.251 rioting;

13. *.252 encouraging others to riot; or

14. *.202 possession or introduction of a gun, firearm, weapon, sharpened instrument, knife or unauthorized tool.

(c) The following prohibited acts appear at the high level of the Severity of Offense—Disciplinary Infractions Scale. Inmates found guilty of any of the below listed disciplinary infractions shall receive five points on the Reclassification Instrument.

1. *.002 assaulting any person;

2. *.005 threatening another with bodily harm or with any offense against his or her person or his or her property;

3. *.006 extortion, blackmail, protection: demanding or receiving favors, money or anything of value in return for protection against others, to avoid bodily harm, or under threat of informing;

4. *.009 misuse or possession of electronic equipment not authorized for use or retention by an inmate such as, but not limited to, a cellular telephone(s), two-way radio(s), other communication device(s) and/or computer(s) and/or related device(s) and peripheral(s);

5. *.010 participating in an activity(ies) related to a security threat group;

6. *.014 unauthorized physical contact with any person with an article, item or material such as anything readily capable of inflicting bodily injury;

7. *.154 tampering with or blocking any locking device;

8. *.155 adulteration of any food or drink;

9. *.203 possession or introduction of any prohibited substances such as drugs, intoxicants or related paraphernalia not prescribed for the inmate by the medical or dental staff;

10. *.204 use of any prohibited substances such as drugs, intoxicants or related paraphernalia not prescribed for the inmate by the medical or dental staff;

11. *.214 possession of unauthorized keys or other security equipment;
12. *.253 engaging in, or encouraging, a group demonstration;
13. *.255 encouraging others to refuse to work or participate in work stoppage;
14. *.258 refusing to submit to testing for prohibited substances;
15. *.259 failure to comply with an order to submit a specimen for prohibited substance testing;
16. *.261 tampering with a urine specimen;
17. *.306 conduct which disrupts or interferes with the security or orderly running of the correctional facility;
18. *.352 counterfeiting, forging or unauthorized reproduction or use of any classification document, court document, psychiatric, psychological or medical report, money or any other official document;
19. *.551 making intoxicants, alcoholic beverages, or prohibited substances such as narcotics and controlled dangerous substances or making related paraphernalia;
20. *.552 being intoxicated;
21. *.704 perpetrating frauds, deceptions, confidence games, riots or escape plots;
22. *.708 refusal to submit to a search; or
23. *.751 giving or offering any official or staff member a bribe or anything of value.

(d) The following prohibited acts appear at the moderate level of the Severity of Offense—Disciplinary Infractions Scale. Inmates found guilty of any of the below listed disciplinary infractions shall receive three points on the Reclassification Instrument.

1. *.004 fighting with another person;
2. *.011 possession or exhibition of anything related to a security threat group;
3. .013 unauthorized physical contact with any person, such as, but not limited to, physical contact not initiated by a staff member, volunteer or visitor;
4. .051 engaging in sexual acts with others;
5. .052 making sexual proposals or threats to another;
6. *.054 refusal to register as a sex offender;
7. .103 wearing a disguise or mask;
8. *.150 tampering with fire alarms, fire equipment or fire suppressant equipment;
9. .152 destroying, altering, or damaging government property, or the property of another person;
10. *.153 stealing (theft);

11. *.205 misuse of authorized medication;
12. .206 possession of money or currency (\$50.00 or less) unless specifically authorized;
13. *.207 possession of money or currency (in excess of \$50.00) unless specifically authorized;
14. .208 possession of property belonging to another person;
15. .210 possession of anything not authorized for retention or receipt by an inmate or not issued to him or her through regular correctional facility channels;
16. .211 possessing any staff member's clothing and/or equipment;
17. .254 refusing to work, or to accept a program or housing unit assignment;
18. .256 refusing to obey an order of any staff member;
19. .257 violating a condition of any community release program;
20. *.260 refusing to submit to mandatory medical or other testing such as, but not limited to, mandatory testing required by law or court order;
21. .301 unexcused absence from work or any assignment; being late for work;
22. .304 using abusive or obscene language to a staff member;
23. .305 lying, providing a false statement to a staff member;
24. .351 counterfeiting, forging, or unauthorized reproduction or use of any document not enumerated in prohibited act *.352;
25. *.360 unlawfully obtaining or seeking to obtain personal information pertaining to an inmate's victim or the victim's family;
26. .401 participating in an unauthorized meeting or gathering;
27. .402 being in an unauthorized area;
28. .451 failure to follow safety or sanitation regulations;
29. .452 using any equipment or machinery which is not specifically authorized;
30. .453 using any equipment or machinery contrary to instructions or posted safety standards;
31. .501 failure to stand count;
32. .502 interfering with the taking of count;
33. .601 gambling;
34. .602 preparing or conducting a gambling pool;

35. .603 possession of gambling paraphernalia;
36. .701 unauthorized use of mail or telephone;
37. .702 unauthorized contacts with the public;
38. .703 correspondence or conduct with a visitor in violation of regulations;
39. .705 commencing or operating a business or group for profit or commencing or operating a non-profit enterprise without the approval of the Administrator;
40. .706 soliciting funds and/or noncash contributions from donors within or without the correctional facility except where permitted by the Administrator;
41. .707 failure to keep a scheduled appointment with medical, dental or other professional staff;
42. .709 failure to comply with a written rule or regulation of the correctional facility;
43. .753 purchasing anything on credit; or
44. .754 giving money or anything of value to, or accepting money or anything of value from, a member of another inmate's family or another inmate's friend with an intent to circumvent any correctional facility or Departmental rule, regulation or policy or with an intent to further an illegal or improper purpose.

(e) The following prohibited acts appear at the low moderate level of the Severity of Offense—Disciplinary Infractions Scale. Inmates found guilty of any of the below listed disciplinary infractions shall receive two points on the Reclassification Instrument.

1. *.008 abuse/cruelty to animals;
2. .053 indecent exposure;
3. .209 loaning of property or anything of value;
4. .212 possessing unauthorized clothing;
5. .213 mutilating or altering clothing issued by the government;
6. .302 malingering, feigning an illness;
7. .303 failing to perform work as instructed by a staff member;
8. .553 smoking where prohibited;
9. .554 possession of tobacco products or matches where not permitted;
10. .651 being unsanitary or untidy: failing to keep one's person and one's quarters in accordance with posted standards; or
11. .652 tattooing or self mutilation.

(f) The following prohibited act appears at the low level of the Severity of Offense—Disciplinary Infractions Scale. Inmates found guilty of the below listed disciplinary infrac-

tion shall receive one point on the Reclassification Instrument.

1. .752 giving money or anything of value to, or accepting money or anything of value from, another inmate.

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

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

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

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

Rewrote (c) and (d).

Amended by R.2004 d.3, effective January 5, 2004.

See: 35 N.J.R. 4168(a), 36 N.J.R. 195(a).

Rewrote the section.

10A:9-2.12 Override Code Reference Index

(a) In accordance with the description of the override code, when an inmate cannot be assigned to the recommended custody status indicated by the custody level score on the Initial or Reclassification Instruments, the appropriate override code shall be applied and any specific information concerning the reason for the override shall be documented and maintained in the inmate record:

1. Code A: Medium custody status assignment or above due to mandatory minimum, No Early Release Act (NERA) parole violation, or length of term requirements pursuant to N.J.A.C. 10A:9-4.6;

2. Code B: Medium custody status assignment or above pending disposition of non-permissible detainer or open charge pursuant to N.J.A.C. 10A:9-4.6;

3. Code C: Permanent custody prohibition/bar. Medium custody status assignment or above only due to escape history pursuant to N.J.A.C. 10A:9-4.8;

4. Code D: Medium custody status assignment or above due to escape history pursuant to N.J.A.C. 10A:9-4.6(s);

5. Code E-1: Permanent custody prohibition/bar. Medium custody status assignment or above only due to sexual or arson offense convictions pursuant to N.J.A.C. 10A:9-4.8;

6. Code E-2: Permanent custody prohibition/bar. Gang minimum custody status assignment or above only due to sexual or arson offense convictions pursuant to N.J.A.C. 10A:9-4.7;

7. Code F: Medium custody status assignment or above pending United States Immigration and Naturalization Service (USINS) response indicating interest pursuant to N.J.A.C. 10A:9-4.6;

8. Code G-1: Medium custody status assignment or above due to keep separate status pursuant to N.J.A.C. 10A:9-4.5;

9. Code G-2: Medium custody status assignment or above due to unfavorable psychological/psychiatric reports pursuant to N.J.A.C. 10A:9-3.3 or 4.5;

10. Code H: Medium custody status assignment or above due to voluntary or administrative protective custody pursuant to N.J.A.C. 10A:9-4.5;

11. Code I-1: Medium custody status assignment or above due to specialized substance use disorder screening or treatment pursuant to N.J.A.C. 10A:9-4.6;

12. Code I-2: Medium custody status assignment or above due to specialized medical treatment pursuant to N.J.A.C. 10A:9-4.5;

13. Code I-3: Medium custody status assignment or above due to specialized psychological/psychiatric treatment pursuant to N.J.A.C. 10A:9-4.5;

14. Code J: Requirement for medium custody status assignment or above due to pending disciplinary infraction(s);

15. Medium custody status assignment or above due to reasonable belief of the classification committee that the inmate will be unsuccessful in a lower custody status assignment at this time due to:

i. Code K-1: Field account of the offense pursuant to N.J.A.C. 10A:9-3.3;

ii. Code K-2: Prior criminal record pursuant to N.J.A.C. 10A:9-3.3;

iii. Code K-3: Previous incarcerations pursuant to N.J.A.C. 10A:9-3.3;

iv. Code K-4: Institutional adjustment pursuant to N.J.A.C. 10A:9-3.3;

v. Code K-5: Reports from professional and custody staff pursuant to N.J.A.C. 10A:9-3.3 or 4.5;

vi. Code K-6: Reasons relating to the best interests of the inmate pursuant to N.J.A.C. 10A:9-3.3 and 4.5;

vii. Code K-7: Reasons relating to the safe orderly operation of the Department of Corrections facility pursuant to N.J.A.C. 10A:9-3.3;

viii. Code K-8: Reasons relating to the safety of the community or public at large pursuant to N.J.A.C. 10A:9-3.3;

ix. Code K-9: Reasons relating to the notoriety of the offense pursuant to N.J.A.C. 10A:9-3.3 and 4.5;

16. Reduced custody status due to reasonable belief of the classification committee that the inmate would be successful in a lower than recommended custody status assignment at this time due to:

i. Code L-1: Previous correctional facility adjustment pursuant to N.J.A.C. 10A:9-3.3 and 4.5;

ii. Code L-2: The nature of the offense not being as severe as the assessment scale indicates pursuant to N.J.A.C. 10A:9-3.3 and 4.5;

iii. Code L-3: The short amount of time remaining on the inmate's sentence pursuant to N.J.A.C. 10A:9-4.5;

iv. Code L-4: Any reason relating to the best interests of the inmate pursuant to N.J.A.C. 10A:9-3.3 and 4.5;

v. Code L-5: Any reason relating to the safe, orderly operation of the Department of Corrections facility pursuant to N.J.A.C. 10A:9-3.3 and 4.5;

vi. Code L-6: Prior criminal record pursuant to N.J.A.C. 10A:9-3.3 and 4.5;

vii. Code L-7: Previous incarcerations pursuant to N.J.A.C. 10A:9-3.3 and 4.5;

viii. Code L-8: Reports from professional and custody staff pursuant to N.J.A.C. 10A:9-3.3 and 4.5; or

17. Code M: Medium custody status assignment or above due to a disciplinary sanction for an alcohol/drug related prohibited act pursuant to N.J.A.C. 10A:9-4.6.

(b) When the reason for an objective classification scoring instrument override ceases to apply at a time other than regular review time, the inmate shall be rescored on the same objective classification scoring instrument that was used at the last review.

(c) All objective classification overrides shall be subject to review by the Director, Division of Operations or designee.

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

See: 33 N.J.R. 2390(a), 33 N.J.R. 3947(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), added NJAC references in 10 and 14 and inserted "assignment" following "status" in 13.

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

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

In (a)1, inserted "No Early Release Act (NERA) parole violation" following "mandatory minimum".

Amended by R.2003 d.429, effective November 3, 2003.

See: 35 N.J.R. 2778(a), 35 N.J.R. 5108(a).

Rewrote the section.

SUBCHAPTER 3. INSTITUTIONAL CLASSIFICATION COMMITTEE (I.C.C.)

10A:9-3.1 Responsibilities of the Institutional Classification Committee (I.C.C.)

(a) Each correctional facility shall establish an I.C.C. which shall be responsible for:

1. Assignment of inmates to work, educational, vocational and treatment programs appropriate to their needs;

2. Monitoring the progress of inmates by performing periodic reviews to ensure that rehabilitative efforts are being maximized;

3. Review of inmate applications for change in custody status;
4. Review of inmate requests for transfer to other facilities;
5. Making changes in the housing or program assignments of inmates;
6. Review and approval or disapproval of inmates for participation in community release programs;
7. Review of the imposition of the Administrative Segregation sanction;
8. Review of Restrictive Activities Program assignments at the Adult Diagnostic and Treatment Center (A.D.T.C.);
9. Review of referrals from the Disciplinary Hearing Officers; and
10. Review and approval or disapproval of applications for the Electronic Monitoring/Home Confinement Program.

Recodified from 10A:9-3.2 by R.1992 d.79, effective February 18, 1992. See: 23 N.J.R. 3721(a), 24 N.J.R. 612(a).

Repealed section 10A:9-3.1 was "Composition of the Institutional Classification Committee (I.C.C.)". Revised text. 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.2004 d.180, effective May 3, 2004. See: 36 N.J.R. 6(b), 36 N.J.R. 2241(b).

In (a), substituted "shall establish an I.C.C. which" for "shall establish an Institutional Classification Committee (I.C.C.) which" in the introductory paragraph and rewrote 6.

10A:9-3.2 Composition of the Institutional Classification Committee (I.C.C.)

(a) The members of the Institutional Classification Committee (I.C.C.) at each of the correctional facilities shall be composed of the:

1. Administrator, Associate Administrator or Assistant Superintendent;
2. Director of Education or designee;
3. Social Work Supervisor or designee;

4. Director of Custody Operations or custody supervisor designee;
5. Supervisor of State Use Industries (DEPTCOR) or designee, where applicable; and
6. Classification Officer or designee (non-voting member).

(b) Staff members other than those listed above, may be designated by the Administrator to serve as members or alternate members of the I.C.C.

(c) The I.C.C. shall meet weekly, and more often as required.

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

Old section 10A:9-3.2, Responsibilities of the Institutional Classification Committee (I.C.C.) recodified to 10A:9-3.1. 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 "adult" preceding "correctional facilities"; deleted (a)2, providing that the Director of Psychology is a committee member; redesignated (a)3 through (a)7 as (a)2 through (a)6; and provided for membership by designees.

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, substituted "Administrator, Associate Administrator" for "Superintendent"; in (b), substituted "Administrator" for "Superintendent".

Amended by R.2004 d.180, effective May 3, 2004. See: 36 N.J.R. 6(b), 36 N.J.R. 2241(b).

In (a)6, inserted "or designee" following "Classification Officer".

10A:9-3.3 Institutional Classification Committee (I.C.C.) decision making criteria

(a) Decisions on transfers and assignments to housing; work, educational, vocational, or treatment programs; custody status; and community release programs shall be made after consideration of the following factors:

1. The objective classification scoring results as indicated on form CRAU-006 or CRAU-007 (excluding inmates committed to A.D.T.C.);
2. Needs and interests expressed by inmate;
3. Age;
4. Family status;



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 deportment, the progressive commutation credits indicated in the schedule herein.

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

3. When a sentence contains a fractional part of a year in either the minimum or maximum thereof, then commutation credits in reduction of such fractional part of a year shall be calculated at the rate set out in the schedule for each full month of such fractional part of a year of sentence.

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

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

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

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

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

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

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

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

Revised (a).

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

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

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

Petition for Rulemaking.

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

Case Notes

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".

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.