

(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. .651 being unsanitary or untidy: failing to keep one's person and one's quarters in accordance with posted standards; or
10. .652 tattooing or self mutilation.

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

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 provided in the inmate record:

1. Code A: Medium custody status assignment or above due to mandatory minimum 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 E1: 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 E2: Permanent custody prohibition/bar. Gang minimum custody status assignment 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;

8. Code G: Medium custody status assignment or above with referral to the Inter Institutional Classification Committee (I.I.C.C.) for discussion of issues such as, but not limited to, keep separates, notoriety of offense, medical problems, psychological problems;

9. Code H: Medium custody status assignment or above due to voluntary or administrative protective custody;

10. Code I: Medium custody status assignment or above due to requirements for Specialized Medical/Psychological Treatment. I.C.C. determination of:

- i. Discharge from a therapeutic community (T.C.) due to behavioral maladjustment;
- ii. Refusal to participate in a T.C.;
- iii. Non-acceptance of an assignment to a treatment program; or
- iv. Refusal to participate in clinical screening for a substance use disorder;

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

12. Code K: Medium custody status assignment or above due to the classification committee discretion with serious doubts that the inmate will be successful in a lower than recommended custody status assignment at this time pursuant to N.J.A.C. 10A:9-4.5;

13. Code L: The classification committee discretion that indicates this inmate would be successful in a lower than recommended custody status at this time; or

14. Code M: Medium custody status assignment or above due to a disciplinary sanction for an alcohol/drug related prohibited act.

(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.

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

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 Institutional Classification Committee(s) (I.C.C.) which shall be responsible for:

1. Assigning inmates to work, educational, vocational and treatment programs appropriate to their needs;
2. Monitoring the progress of inmates by scheduling periodic reviews to ensure that rehabilitative efforts are being maximized;
3. Reviewing the applications of inmates for changes in custody status;
4. Reviewing the requests of inmates for transfers to other facilities;
5. Making changes in the housing or program assignments of inmates;
6. Assigning the inmate to community release programs;
7. Approving the application for restoration of commutation time;
8. Reviewing the imposition of Administration Segregation;
9. Reviewing Restrictive Activities Program assignments at the Adult Diagnostic and Treatment Center (A.D.T.C.);
10. Reviewing referrals by the Disciplinary Hearing Officer; and
11. Reviewing and approving or disapproving 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.

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. Superintendent 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 (non-voting member).

(b) Staff members other than those listed above, may be designated by the Superintendent 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.

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. Social contacts with family and friends;
6. Correctional facility adjustment;
7. Educational history and needs;
8. Vocational history and needs;
9. Military history;
10. Nature and circumstance of present offense;
11. Prior offense record;
12. Records from previous confinement;
13. Detainers on file or pending;
14. Drug dependency and/or involvement;
15. Sexual adjustment;
16. History of escape, attempted escape or propensity for escape;

17. Current psychological and/or psychiatric reports;
18. Medical history and recommendations;
19. Arson history;
20. Needs of the correctional facility; and/or
21. Any other factor pertinent to the inmate's case.

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

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

Stylistic revisions 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).

Inserted (a)1; and recodified former (a)1 through (a)20 as (a)2 through (a)21.

10A:9-3.4 Initial classification

(a) Upon assignment to a correctional facility or its satellite, an inmate shall be interviewed and may be tested to determine the inmate's aptitudes, abilities, interests and problems.

(b) The inmate's appearance before the Institutional Classification Committee (I.C.C.) shall occur within 21 days after admission to the correctional facility.

(c) The Institutional Classification Committee (I.C.C.) or Administrator of the receiving correctional facility may appeal a Central Reception Assignment Facility (CRAF) custody level assignment and/or correctional facility assignment when, in the opinion of the I.C.C. or Administrator, the CRAF assignment is not appropriate.

1. Appeals shall include Form CRAF-001, a copy of the scored objective classification instrument, and any supporting material;
2. Appeals shall be faxed to the CRAF within two business days of the I.C.C. review;
3. Appeals initiated after two business days shall be submitted to the Director, Division of Operations;
4. Appeals shall be forwarded by the CRAF to the Director, Division of Operations for review;
5. The receiving correctional facility has the authority to keep the inmate at a higher custody status until the appeal process has been completed; and
6. Results of an appeal shall be available to the receiving correctional facility Administrator no later than one week following receipt of the appeal by the Director, Division of Operations.

(d) At the initial classification, the I.C.C. shall, subject to availability, assign an inmate to a program which may include:

1. A work assignment;
2. A treatment program;
3. An education program; and/or

4. A vocational training program.

(e) An inmate may be referred by the I.C.C. to a subcommittee or department head for consideration for individual components of a program.

(f) A review date shall be set and the decision of the I.C.C. shall be forwarded to the appropriate departments.

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), substituted "a correctional facility" for "an adult correctional facility".

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

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

Added a new (c) and recodified former (c) through (e) as (d) through (f).

Case Notes

Inmates had no constitutionally protected right to specific prison work assignments; Regulation of prison work assignments and credits did not impose hardship on inmates that was either atypical or significant in relation to ordinary incidents of prison life. *Lorusso v. Pinchak*, 305 N.J.Super. 117, 701 A.2d 974 (A.D. 1997).

10A:9-3.5 Review dates

(a) Inmates shall be scheduled for a review date at initial classification that is at least six months and no more than 12 months from the date of initial classification.

(b) Whenever a State-sentenced inmate housed in an adult county correctional facility is transferred to his or her initial classification correctional facility assignment prior to his or her scheduled review date, the review shall be rescheduled to a date at least six months and no more than 12 months from the date of the inmate's arrival at the assigned facility. (See N.J.A.C. 10A:9-2.3, Administration of objective classification scoring instruments.)

(c) Inmates shall be scored on the Reclassification Instrument at the review following initial classification.

(d) If an objective classification scoring instrument override was used during initial classification and the reasons for the override cease to apply within six months, the inmate shall be rescored on the Initial Instrument.

(e) The frequency of case review and reevaluation on the Reclassification Instrument shall be at intervals of three to 12 months as determined by the Institutional Classification Committee (I.C.C.) or a change in the inmate's status. A copy of the scored Reclassification Instrument shall be provided to the inmate by the correctional facility within one week of the I.C.C. review. Factors that may be considered include:

1. Parole date changes;
2. Sentence changes;

3. Changes in personal needs;
4. Referrals from the Disciplinary Hearing Officer; or
5. Other situations arising which make a case review appropriate.

(f) The Classification Officer shall be responsible for scheduling all reviews set by the I.C.C.

(g) An update of the inmate's psychological status shall occur on a yearly basis, or more often as the need arises.

(h) An inmate shall be notified of his or her review date no later than 48 hours prior to its occurrence. When the inmate appears before the I.C.C., he or she may submit a request for reassignment in the areas of:

1. Housing;
2. Work;
3. Education;
4. Vocational training;
5. Counseling or treatment; and
6. Custody status.

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) and (c).

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

Rewrote the section.

10A:9-3.6 Special reviews

(a) Inmates desiring a special review of their cases because of a change in status may submit a written request which indicates the reason for the review to the staff member(s) designated by the Superintendent.

(b) It shall be the responsibility of the staff member to determine if the requested review is appropriate, and the reports that will be necessary for consideration. If the review is recommended, the staff member will forward all appropriate information to the Institutional Classification Committee (I.C.C.).

10A:9-3.7 Discussions

(a) An inmate's case may be brought to the attention of the Institutional Classification Committee (I.C.C.) prior to his or her review date if it has been referred by a staff member or an institutional committee for the purpose of making a change in:

1. Work assignment;
2. Custody status;
3. Housing assignment; or
4. Program assignment.

10A:9-3.8 Work assignments

(a) Decisions on inmate work assignments shall be made by the Institutional Classification Committee (I.C.C.) based upon:

1. Physical condition;
2. Mental and mechanical aptitudes;
3. Past work experience;
4. Occupational interests;
5. Vocational needs of the inmate;
6. Opportunities upon release; and
7. Availability of jobs within the correctional facility.

(b) When the I.C.C. has assigned an inmate to a job, the inmate may not request a job change until at least two months of work has been completed on the job.

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).

Petition for Rulemaking.

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

10A:9-3.9 Educational assignments

(a) Determining factors in referring an inmate to an educational program may include:

1. Recommendation of the Supervisor of Educational programs;
2. Test results;
3. Interest and aptitude of the inmate;
4. Sentence length; and/or
5. Community employment plan.

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:9-3.10 Counseling assignments

(a) Inmates with emotional and/or personal problems may be referred to the appropriate staff members.

(b) Inmates may be approved for group counseling and other therapy programs by the Institutional Classification Committee (I.C.C.) and may be assigned by the staff member in charge of the program.

(c) Inmates may be removed from these programs only by the decision of the 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)-(b).

10A:9-3.11 Reassignments

(a) Reassignments are cases referred to the Institutional Classification Committee (I.C.C.) for a change in some area of an inmate's program.

(b) Any change in or addition to the inmate's initial program shall be made by the I.C.C. Reassignments may be made upon inmate or staff request, as the need arises.

10A:9-3.12 Community release programs

The Institutional Classification Committee (I.C.C.) may assign an inmate to a community release program when the inmate has been classified as full minimum custody status and meets the criteria for assignment to the program in which the inmate will participate.

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

Inserted "status" following "custody".

10A:9-3.13 Transfers

(a) Except for inmates assigned to the Adult Diagnostic and Treatment Center (A.D.T.C.) and the Edna Mahan Correctional Facility for Women (EMCF) at Clinton, the I.C.C. shall review an inmate's request for transfer to another correctional facility.

(b) When the I.C.C. has determined that the inmate meets the criteria for assignment to the correctional facility within the security level indicated by the inmate's custody status, the I.C.C. shall recommend such transfer to the Administrator where the inmate is currently housed.

(c) Form CRAF-003 Agreement of Transfer, shall be initiated by the Administrator of the sending facility. If the Administrator of the correctional facility to which the inmate is requesting transfer signs Form CRAF-003, the sending facility shall forward the completed form to the Inter-Institutional Classification Committee (I.I.C.C.) or the Special Classification Committee (S.C.C.) for consideration.

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

Institutional name change.

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

Rewrote (b) and added (c).

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 "within the security level indicated by the inmate's custody status," and substituted "Administrator" for "Superintendent"; rewrote (c).

10A:9-3.14 Required reviews

(a) Inmate records shall be rescored on the objective classification scoring instrument used at the last review when there is a change in sentencing or official record

information that affects one or more of the following criteria assessed on an objective classification scoring instrument:

1. Severity of current offense;
2. Prior assaultive offense history;
3. Escape history;
4. Balance of term to be served to expiration of sentence—Initial Instrument only;
5. Alcohol/drug use history—Initial Instrument only;
6. Current detainer/open charges;
7. Prior felony convictions;
8. Stability factors—Initial Instrument only; or
9. Balance of term to parole eligibility date—Reclassification Instrument only.

(b) When a non-permissible detainer/open charge is received on an inmate assigned to reduced custody status:

1. The Administrator shall be notified by the Classification Officer IV or designee;
2. A temporary increase in custody status shall be placed on the inmate where deemed necessary; and
3. The inmate shall be scheduled for review at the next I.C.C. meeting following the temporary increase in custody status.

(c) If an override is required on an objective classification scoring instrument that has been rescored due to a change in inmate sentencing or official record information, or the receipt or return of a non-permissible detainer/open charge, the inmate shall be referred to the Director, Division of Operations for review.

(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.

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 of the correctional facility, but on the grounds of the facility and under continuous supervision of a correction officer, civilian instructor or other employee authorized to supervise inmate. 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 assigned to community-based jobs. Community custody status may require periodic supervision in the community as appropriate to circumstances of work or activities. 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).

10A:9-4.4 Authority of Classification Committees

(a) Changes in inmates' 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 Superintendent, Assistant Superintendent or Director of Custody Operations.

2. Such custody level changes must be reviewed and approved by the I.C.C. as soon as is reasonably feasible.

(b) The Inter-Institutional Classification Committee (I.I.C.C.) is authorized to review and change the custody status of any inmate.

(c) The I.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".

10A:9-4.5 Discretion of Institutional Classification Committees (I.C.C.); factors to be considered

(a) In making decisions to reduce an inmate's custody status, Institutional Classification Committees (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 Superintendent and Institutional Classification Committee, 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 Institutional Classification Committees (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) Institutional Classification Committees (I.C.C.) shall not be compelled by these criteria to automatically grant a reduction in custody status to every inmate who is eligible for consideration.

(d) Institutional Classification Committees (I.C.C.) 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 Institutional Classification Committee (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 Superintendent and Institutional Classification Committee, 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 Institutional Classification Committee's reason(s) for increasing the inmate's custody status within five working 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.

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) Institutional Classification Committees (I.C.C.) 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.

(c) 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.

Length of Sentence	Years in Medium and Higher Custody Status
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

(d) 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.

(e) 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 (e)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 (c) 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 (c) above instead of the one year which would be required under (e)2 above.)

(f) 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.

(g) In any instance where the application of (f) 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 (c) 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 (c) above instead of the one and one-half years which would be required under (f) above.)

(h) 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.

(i) 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

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

1. The detainees for adjudicated offenses are for concurrent sentences which do not exceed the maximum of the term currently being served; or
2. Application has been made under the Interstate Agreement on Detainers (I.A.D.) for disposition of the detainee and the inmate is not brought to trial within 180 calendar days from the date of the inmate's request and no court-ordered continuances were granted.

(k) 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.

(l) 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.

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

(n) Inmates who have a New Jersey detainee(s) are eligible to be considered for gang minimum custody status and full minimum custody status unless the detainee(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.

(o) 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.

(p) 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 of 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.

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

(r) 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.

(s) 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.

31 N.J.R. 3537(a), 31 N.J.R. 4127(b).

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 Superintendent 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).

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

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: