

CHAPTER 9

CLASSIFICATION PROCESS

Authority

N.J.S.A. 30:1B-6 and 30:1B-10.

Source and Effective Date

R.2007 d.379, effective November 14, 2007.
See: 39 N.J.R. 2445(a), 39 N.J.R. 5340(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1.c(2), Chapter 9, Classification Process, expires on May 13, 2015. See: 47 N.J.R. 65(a).

Chapter Historical Note

Chapter 9, Classification Process, was adopted as R.1987 d.48, effective January 20, 1987. See: 18 N.J.R. 1649(a), 19 N.J.R. 218(a).

Pursuant to Executive Order No. 66(1978), Chapter 9, Classification Process, expired on January 20, 1992.

Chapter 9, Classification Process, was adopted as new rules by R.1992 d.79, effective February 18, 1992. See: 23 N.J.R. 3721(a), 24 N.J.R. 612(a).

Pursuant to Executive Order No. 66(1978), Chapter 9, Classification Process, was readopted as R.1997 d.122, effective February 14, 1997. See: 29 N.J.R. 80(b), 29 N.J.R. 880(a). As a part of R.1997 d.122, effective March 17, 1997, Subchapter 9, Reception and Placement Process for Male Juveniles; Subchapter 10, Juvenile Institutional Classification Committee (J.I.C.C.); and Subchapter 11, Juvenile Female Classification Committee (J.F.C.C.), were repealed. See: 29 N.J.R. 80(b), 29 N.J.R. 880(a).

Chapter 9, Classification Process, was readopted as R.2002 d.190, effective May 24, 2002. See: 34 N.J.R. 1082(a), 34 N.J.R. 2030(a).

Chapter 9, Classification Process, was readopted as R.2007 d.379, effective November 14, 2007. As a part of R.2007 d.379, Subchapter 1, Introduction, was renamed General Provisions; Subchapter 6, Inter-Institutional Classification Committee (I.I.C.C.), was renamed Institutional Classification Reception Committee (I.C.R.C.); Subchapter 7, Special Classification Committee (S.C.C.), was renamed Inter-Institutional Transfer; and Subchapter 9, Community Corrections Classification Committee (C-4), and Subchapter 10, Residential Community Program Notification Committee, were adopted as new rules, effective December 17, 2007. See: Source and Effective Date. See, also, section annotations.

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 9, Classification Process, was scheduled to expire on November 14, 2014. See: 43 N.J.R. 1203(a).

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SUBCHAPTER 1. GENERAL PROVISIONS

10A:9-1.1 Purpose

(a) The purpose of this chapter is to:

1. Establish objective criteria and a standardized process for inmate evaluation, custody level assignment, and correctional facility assignment;
2. Establish the responsibilities and functions of the Institutional Classification Committees (I.C.C.);
3. Establish eligibility criteria for reduced custody status;

4. Establish provisions for the award and forfeiture of commutation time and work credits;

5. Establish provisions for the transfer of inmates between correctional facilities;

6. Establish provisions for the parole recommendation process for inmates incarcerated pursuant to N.J.S.A. 2C:47 and 2A:164; and

7. Establish rules to fulfill the functions of the Department of Corrections as enumerated in N.J.A.C. 10A:1-1.1.

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

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

Added (a)7.

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

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

Deleted (a)6, relating to a process for assignment and transfer of juvenile offenders; and recodified (a)7 as (a)6.

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

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

In (a), added a new 1 and recodified former 1 through 6 as 2 through 7.

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

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

Rewrote the section.

10A:9-1.2 Scope

(a) This chapter shall be applicable to the Division of Operations unless otherwise indicated.

(b) N.J.A.C. 10A:9-8 shall be applicable to inmates sentenced under N.J.S.A. 2C:47 and 2A:164 who are housed at either the Adult Diagnostic and Treatment Center (A.D.T.C.) or other facilities.

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.

10A:9-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

“Assaultive offense” means a criminal conviction for an offense involving violence or use of force, or any offense involving the threat or attempted use of force or violence including, but not limited to, a sexual offense, carjacking, and kidnapping.

“Assessment scale” means a fixed progressive reference system used as a measurement standard to determine the relative value, degree, importance, rank, or rating of factors including, but not limited to, criminal and/or assaultive offenses or prohibited acts, escape history, time to expiration of sentence or parole, inmate age, education, employment history, alcohol/drug use, or correctional facility program participation.

“Classification Committee” means a group of correctional staff members that have been designated to make decisions related to the needs of inmates from admission to discharge.

“Classification material” means the documents in a classification folder on which information regarding an inmate is recorded such as, but not limited to, psychological or psychiatric evaluations, rap sheets, disciplinary charges, program participation, pre-sentence reports, and medical reports.

“Gap time credit” means the credit awarded by the sentencing court for the period of time between dates of sentence when a defendant, who has previously been sentenced to imprisonment, is subsequently sentenced to another term for an offense committed prior to the former sentence, other than an offense committed while in custody.

“Increased custody” means assignment of an inmate to a custody level that requires more supervision.

“Initial classification” means the process by which an inmate is reviewed and/or evaluated upon admission to the Department of Corrections in order to determine the initial custody status, correctional facility, program and job assignment.

“Initial Instrument” means an objective classification scoring instrument that is weighted to evaluate an inmate’s prior criminal history and selected stability factors to determine the inmate’s initial custody level, correctional facility, program and job assignment.

“Intensive Supervision Program” means the program which permits certain offenders sentenced to State correctional institutions to be sentenced by a Resentencing Panel of judges to an intermediate form of punishment between incarceration and probation.

“Jones Farm” means a community-based satellite unit of the Central Reception and Assignment Facility (CRAF) that houses inmates in full minimum custody status who meet the criteria for assignment to that facility.

“No Early Release Act (NERA),” N.J.S.A. 2C:43-7.2, means the Act that requires that persons who are sentenced to prison terms for committing certain enumerated crimes of the first and second degree be required to serve at least 85 percent of the term of incarceration imposed by the court before being eligible for parole.

“Open charge” means an offense for which an inmate has been arrested but that lacks a final disposition and which is not represented by a detainer.

“Override Code Reference Index” means a list of justification codes used to document when an inmate is assigned to a custody status other than the recommended custody status indicated by the custody level score on an objective classification scoring instrument.

“Rahway Camp” means a community-based satellite unit of East Jersey State Prison that houses inmates in full minimum custody status who meet the criteria for assignment to that facility.

“Reclassification” means the process by which an inmate is reviewed and/or evaluated subsequent to initial classification to determine future custody level, correctional facility, program and job assignment.

“Reclassification Instrument” means an objective classification scoring instrument that is weighted to evaluate an inmate’s correctional facility adjustment subsequent to initial classification to determine custody level, correctional facility, program and job assignment.

“Reduced custody” means assignment of an inmate to a custody level that requires less supervision.

“Security level” means the numerical rating which represents the physical attributes of a correctional facility or housing unit in primarily objective terms related to perimeter security, operating procedures, and internal housing configurations to identify the highest custody level of inmates allowed.

“Severity of Offense Scale” means a fixed progressive reference system consisting of criminal offenses and point values designated for use with the Initial and Reclassification Instruments that are grouped according to the severity and degree of the crime and used to rate criminal offense related criteria.

“Severity of Offense—Disciplinary Infractions Scale” means a fixed progressive reference system consisting of prohibited acts and point values grouped according to the severity of the infraction to rate the disciplinary history of an inmate on the reclassification instrument.

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

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

Added “Intensive Supervision Program”.

Administrative correction, effective January 27, 1989.

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

Institutional name change.

Amended by R.1989 d.299, effective June 5, 1989.

See: 21 N.J.R. 664(a), 21 N.J.R. 1516(c).

Definition of “Gap time credit” added.

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

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

Added “Custody status” and “Objective classification”; deleted “Commissioner”, “Division of Adult Institutions”, “Division of Juvenile Services”, “Indeterminate sentence”, “Prison complex”, “Prison sentence”, “Superintendent”, “Vroom Readjustment Unit”, and “Youth Complex”.

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

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

In the introductory paragraph, inserted “, when used in this chapter,” preceding “shall have” and substituted “indicates” for “indicts” preceding “otherwise”; added “Assaultive offense”, “Assessment scale”, “Custody level”, “Initial classification”, “Initial Instrument”, “Open charge”, “Override Code Reference Index”, “Reclassification”, “Reclassification Instrument”, “Security level”, “Severity of Offense Scale” and “Severity of Offense—Disciplinary Infractions Scale”.

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.D.T.C.” and “Classification Committee”, substituted “inmates” for “persons” and amended the N.J.S.A. references in “A.D.T.C.”; in “Classification material” inserted “but not limited to,” preceding “psychological” and substituted “reports” for “records, etc.”; in “Jones Farm”

substituted "Central Reception and Assignment Facility (CRAF)" for "New Jersey State Prison".

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

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

Added "No Early Release Act (NERA)."

Amended by R.2006 d.151, effective May 1, 2006.

See: 38 N.J.R. 96(a), 38 N.J.R. 1836(a).

Deleted the definitions for "A.D.T.C.", "Custody status" and "Detainer"; in the definition of "Objective classification", in 4, substituted "correctional facility" for "institutional", in 14, deleted "and", in 15, substituted "; and" for a period, and added 16.

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

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

Deleted definitions "Custody level" and "Objective classification"; in definition "Initial classification", substituted "status" for "level"; in definition "Jones Farm", substituted "community-based" for "community based" and "that" for "which"; and added definition "Rahway Camp".

10A:9-1.4 Forms

(a) The following form related to classification is available by accessing the Department of Corrections computer network (DOCNet). Interested individuals who do not have access to DOCNet may obtain a copy of the form by contacting the Administrative Rules Unit, New Jersey Department of Corrections:

1. 852-I Authorization for Emergency Transfer.

(b) The following forms related to the classification of inmates shall be reproduced by each correctional facility from the originals, which are available by contacting the Office of Classification Monitoring and Support Services (O.C.M.S.S.), Division of Operations.

1. CRAF-003 Agreement of Transfer;
2. CRAF-003-D Special Needs Agreement of Transfer; and
3. OC-OO1 Request for Override Approval.

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

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

Added (b).

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

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

Rewrote (b).

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

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

In (b), added new 4, recodified existing 4 and 5 as 5 and 6.

Administrative change.

See: 35 N.J.R. 1137(a).

Amended by R.2006 d.419, effective December 4, 2006.

See: 38 N.J.R. 3226(a), 38 N.J.R. 5161(a).

In the introductory paragraph of (a), deleted "shall be reproduced by each correctional facility from the original which" preceding "is available", inserted "by accessing the Department of Corrections computer network (DOCNet). Interested individuals who do not have access to DOCNet may obtain a copy of the form" and substituted a semicolon for the period at the end.

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

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

In the introductory paragraph of (b), inserted a comma following "originals"; deleted (b)1 and (b)2; recodified former (b)3 and (b)4 as (b)1 and (b)2; in (b)2, inserted "; and" at the end; deleted (b)5 and (b)6; and added new (b)3.

SUBCHAPTER 2. OBJECTIVE CLASSIFICATION PROCESS

10A:9-2.1 Initial classification

(a) Male offenders are admitted to the Central Reception and Assignment Facility (CRAF) or the Adult Diagnostic and Treatment Center (A.D.T.C.) and female offenders are admitted to the Edna Mahan Correctional Facility for Women (EMCF) where inmates begin the initial classification process.

(b) Upon admission to the reception unit, assignment to housing shall be made based upon the inmate's:

1. Age;
2. Size;
3. Offense;
4. Sentence;
5. Previous incarcerations;
6. Mental status; or
7. Security concerns.

(c) The initial classification process shall be completed within three weeks, unless unusual circumstances arise.

(d) During the initial classification process, the inmate shall be:

1. Photographed;
2. Fingerprinted;
3. Given orientation;
4. Given medical and dental examinations;
5. Interviewed by the psychologist, social worker and other staff members;
6. Given educational testing; and
7. Scored on an objective classification scoring instrument (excluding inmates committed to A.D.T.C.).

(e) Pursuant to N.J.S.A. 2C:47-3, male inmates who have been admitted to the A.D.T.C. with sentences of more than seven years shall be scored on the initial instrument and transferred to CRAF to receive a non-A.D.T.C. correctional facility assignment. These inmates shall be reassigned to the A.D.T.C. when the mandatory minimum sentence or sentence maximum reaches five years and seven months.

(f) At the end of the initial classification process, a male inmate admitted to the CRAF shall appear before the Institutional Classification Reception Committee (I.C.R.C.) where the inmate's custody status and correctional facility/unit assignment shall be decided.

(g) At the end of the initial classification process, a male inmate admitted to the A.D.T.C. shall appear before the Institutional Classification Committee (I.C.C.) where the inmate's program while at the A.D.T.C. such as, but not limited to, housing, therapy, job and education shall be decided.

(h) At the end of the initial classification process, a female inmate admitted to the EMCF shall appear before the Institutional Classification Committee (I.C.C.) where the inmate's program while at the EMCF such as, but not limited to, housing, degree of custody, education, and job shall be decided.

(i) A copy of the scored Initial Instrument shall be provided to the inmate by the receiving correctional facility within one week of the I.C.C. review.

Amended by R.1987 d.460, effective November 16, 1987.
See: 19 N.J.R. 1395(a), 19 N.J.R. 2195(a).

(d)5 deleted; old (d)6 renumbered (d)5.
Administrative correction, effective January 27, 1989.
See: 21 N.J.R. 558(a).

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

Revised (e).
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 "Male offenders"; inserted (d)6; and in (f) and (g), substituted "such as" for "for example" and deleted "etc." following "education".

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

Added (b)7; in (d)7, deleted the last sentence; and in (f), substituted "Institutional Classification Reception Committee (I.C.R.C.)" for "Inter-Institutional Classification Committee (I.I.C.C.)" and "status" for "level".

10A:9-2.2 Objective classification scoring process

(a) The Department of Corrections utilizes the following objective classification scoring instruments for the standardized evaluation and custody assignment of inmates:

1. The Initial Instrument for Male Inmates;
2. The Initial Instrument for Female Inmates;
3. The Reclassification Instrument for Male Inmates; and
4. The Reclassification Instrument for Female Inmates.

(b) The objective classification scoring instruments include assessment scales that are used to generate the objective classification score of the inmate. These assessment scales include the:

1. Severity of Offense Scale;
2. Escape History Scale;
3. Institutional Violence Scale;

4. Prior Felony Convictions Scale;
5. Stability Factors Scale;
6. Number of Disciplinary Reports Scale;
7. Severity of Offense—Disciplinary Infractions Scale;
8. Current Age Scale; and
9. Program Participation Scale.

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.2007 d.379, effective December 17, 2007.

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

Rewrote (a); deleted (b)4 through (b)6; recodified former (b)7 through (b)11 as (b)4 through (b)8; in (b)8, inserted "and" at the end; deleted (b)12; and recodified (b)13 as (b)9.

10A:9-2.3 Administration of objective classification scoring instruments

(a) The Initial Instrument shall be administered to:

1. All inmates newly admitted to the Department of Corrections;
2. Parole violators with new commitment orders;
3. Inmates with changes in sentencing or official record information;
4. Inmates who have not previously been scored on an objective classification scoring instrument; or
5. When deemed necessary by administrative staff.

(b) The Reclassification Instrument shall be administered to:

1. Inmates receiving a routine review;
2. Inmates being evaluated for reduced custody status;
3. Parole violators without new commitment orders;
4. Inmates with changes in sentencing or official record information;
5. Inmates upon a finding of guilt to a prohibited act pursuant to N.J.A.C. 10A:9-3.14, Required reviews; and
6. When deemed necessary by administrative staff.

(c) The Initial Instrument shall be administered to State-sentenced inmates housed in adult county correctional facilities in accordance with (a) above.

(d) The Reclassification Instrument shall be administered to inmates serving State sentences in adult county correctional facilities in accordance with (b) above.

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.2007 d.379, effective December 17, 2007.

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

In (b)5, inserted "and" at the end; deleted (b)6; and recodified former (b)7 as (b)6.

10A:9-2.4 Objective criteria for the Initial Instrument for Male Inmates

(a) Upon review of the inmate's classification file, each of the criteria established in (c) below shall be assessed by a Technical Assistant or above, and assigned points in accordance with the assessment scales indicated. The total points shall determine the custody status score on the Initial Instrument for Male Inmates as follows, except as established in (b) below:

1. An inmate/parole violator custody status score of 12 points or more shall indicate a recommendation for placement into maximum custody status;
2. An inmate/parole violator custody status score of five to 11 points shall indicate a recommendation for placement into medium custody status; or
3. An inmate/parole violator custody status score of four points or less shall indicate a recommendation for placement into minimum custody status.

(b) A total of 10 or more points resulting from a review of the inmate's classification file on the criteria set forth in (c)1 through 4 shall result in a recommendation for placement into maximum custody status (see N.J.A.C. 10A:9-4.3, Custody levels).

(c) The objective criteria for the Initial Instrument for Male Inmates are as follows:

1. Severity of offense based on the most serious offense in the present commitment (see the Severity of Offense Scale at N.J.A.C. 10A:9-2.6);
2. Prior assaultive offense history based on the most serious assaultive offense in the last 10 years of criminal history (see the Severity of Offense Scale at N.J.A.C. 10A:9-2.8);
3. Escape history during the previous five years of incarceration from the date of review regardless of the age or legal status of the inmate (see the Escape History Scale at N.J.A.C. 10A:9-2.9);
4. History of institutional violence based on institutional disciplinary reports for any offense involving a weapon or any of the following offenses during the previous five years of incarceration from the date of review (see the Institutional Violence Scale at N.J.A.C. 10A:9-2.11):
 - i. *.001 killing;
 - ii. *.002 assaulting any person;
 - iii. *.003 assaulting any person with a weapon;
 - iv. *.004 fighting with another person;
 - v. *.005 threatening another with bodily harm or with any offense against his or her person or his or her property;

- vi. *.007 hostage taking;
- vii. *.012 throwing bodily fluid at any person or otherwise purposely subjecting such person to contact with a bodily fluid;
- viii. *.014 unauthorized physical contact with any person with an article, item or material, such as anything readily capable of inflicting bodily injury;
- ix. *.050 sexual assault;
- x. *.151 setting a fire;
- xi. *.155 adulteration of any food or drink;
- xii. *.201 possession or introduction of an explosive, incendiary device or any ammunition;
- xiii. *.251 rioting; or
- xiv. *.252 encouraging others to riot;

5. Prior felony convictions. The following Prior Felony Convictions Scale shall be used to assess an inmate's prior felony convictions and to assign points on the Initial Instrument for Male Inmates:

- i. Inmates with zero prior felony convictions shall receive zero points;
- ii. Inmates with one prior felony conviction shall receive one point; or
- iii. Inmates with two or more felony convictions shall receive two points; and

6. Stability factors. The following Stability Factors Scale shall be used to assess factors likely to have a stabilizing effect on an inmate and to assign points on the Initial Instrument for Male Inmates:

- i. Inmates 24 years of age or younger shall receive one point;
- ii. Inmates 25 to 38 years of age shall receive zero points;
- iii. Inmates 39 years of age or older shall receive minus two points;
- iv. Inmates with a high school diploma or GED shall receive minus one point; and
- v. Inmates employed or attending school for the 12-month period immediately prior to the date of arrest shall receive minus one point.

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.2007 d.379, effective December 17, 2007.

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

Section was "Objective criteria for the Initial Instrument". Rewrote (a) and (c).

10A:9-2.5 Objective criteria for the Initial Instrument for Female Inmates

(a) Upon review of the inmate's classification file, each of the criteria established in (c) below shall be assessed by a Technical Assistant or above, and assigned points in accordance with the assessment scales indicated. The total points shall determine the custody level score on the Initial Instrument for Female Inmates as follows, except as established in (b) below:

1. An inmate/parole violator custody status score of 15 points or more shall indicate a recommendation for placement into maximum custody status;
2. An inmate/parole violator custody status score seven to 14 points shall indicate a recommendation for placement into medium-custody status; or
3. An inmate/parole violator custody status score of six points or less shall indicate a recommendation for placement into minimum custody status.

(b) A total of 10 or more points resulting from a review of the inmate's classification file on the criteria set forth in (c)1 through 4 below shall result in a recommendation for placement into maximum custody status (see N.J.A.C. 10A:9-4.3, Custody levels).

(c) The objective criteria for the Initial Instrument for Female Inmates are as follows:

1. Severity of offense based on the most serious offense in the present commitment (see the Severity of Offense Scale at N.J.A.C. 10A:9-2.8);
2. Prior assaultive offense history based on the most serious assaultive offense in the last 10 years of criminal history (see the Severity of Offense Scale at N.J.A.C. 10A:9-2.8);
3. Escape history during the previous five years of incarceration from the date of review regardless of the age or legal status of the inmate (see the Escape History Scale at N.J.A.C. 10A:9-2.10);
4. History of institutional violence based on institutional disciplinary reports for any offense involving a weapon or any of the following offenses during the previous five years of incarceration from the date of review (see the Institutional Violence Scale at N.J.A.C. 10A:9-2.12):
 - i. *.001 killing;
 - ii. *.002 assaulting any person;
 - iii. *.003 assaulting any person with a weapon;
 - iv. *.004 fighting with another person;
 - v. *.005 threatening another with bodily harm or with any offense against his or her person or his or her property;

- vi. *.007 hostage taking;
- vii. *.012 throwing bodily fluid at any person or otherwise purposely subjecting such person to contact with a bodily fluid;
- viii. *.014 unauthorized physical contact with any person with an article, item or material, such as anything readily capable of inflicting bodily injury;
- ix. *.050 sexual assault;
- x. *.151 setting a fire;
- xi. *.155 adulteration of any food or drink;
- xii. *.201 possession or introduction of an explosive, incendiary device or any ammunition;
- xiii. *.251 rioting; or
- xiv. *.252 encouraging others to riot.

5. Prior felony convictions. The following Prior Felony Convictions Scale shall be used to assess an inmate's prior felony convictions and to assign points on the Initial Instrument for Female Inmates:

- i. Inmates with zero prior felony convictions shall receive zero points;
- ii. Inmates with one prior felony conviction shall receive one point; or
- iii. Inmates with two or more felony convictions shall receive two points; and

6. Stability factors. The following Stability Factors Scale shall be used to assess factors likely to have a stabilizing effect on an inmate and to assign points on the Initial Instrument for Female Inmates:

- i. Inmates 24 years of age or younger shall receive one point;
- ii. Inmates 25 to 38 years of age shall receive zero points;
- iii. Inmates 39 years of age or older shall receive minus two points;
- iv. Inmates with a high school diploma or GED shall receive minus one point; and
- v. Inmates employed or attending school for the 12-month period immediately prior to the date of arrest shall receive minus one point.

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

Former N.J.A.C. 10A:9-2.5, Objective criteria for the Reclassification Instrument, recodified to N.J.A.C. 10A:9-2.6.

10A:9-2.6 Objective criteria for the Reclassification Instrument for Male Inmates

(a) Upon review of the inmate's classification file, each of the criteria established in (b) below shall be assessed by a Technical Assistant or above, and assigned points in accordance with the assessment scales indicated. The total points shall determine the custody status score on the Reclassification Instrument for Male Inmates as follows (see N.J.A.C. 10A:9-4.3, Custody status):

1. An inmate/parole violator score of 12 points or more shall indicate a recommendation for placement into maximum custody status;
2. An inmate/parole violator score of five to 11 points shall indicate a recommendation for placement into medium custody status; or
3. An inmate/parole violator score of four points or less shall indicate a recommendation for placement into minimum custody status.

(b) The objective criteria for the Reclassification Instrument for Male Inmates are as follows:

1. Severity of offense based on the most serious offense in the present commitment (see the Severity of Offense Scale at N.J.A.C. 10A:9-2.6);
2. Prior assaultive offense history based on the most serious assaultive offense in the last 10 years of criminal history (see the Severity of Offense Scale at N.J.A.C. 10A:9-2.8);
3. History of institutional violence based on institutional disciplinary reports for any offense involving a weapon or any of the following offenses during the previous five years of incarceration from the date of review (see the Institutional Violence Scale at N.J.A.C. 10A:9-2.11):
 - i. *.001 killing;
 - ii. *.002 assaulting any person;
 - iii. *.003 assaulting any person with a weapon;
 - iv. *.004 fighting with another person;
 - v. *.005 threatening another with bodily harm or with any offense against his or her person or his or her property;
 - vi. *.007 hostage taking;
 - vii. *.012 throwing bodily fluid at any person or otherwise purposely subjecting such person to contact with a bodily fluid;
 - viii. *.014 unauthorized physical contact with any person with an article, item or material, such as anything readily capable of inflicting bodily injury;
 - ix. *.050 sexual assault;

- x. *.151 setting a fire;
- xi. *.155 adulteration of any food or drink;
- xii. *.201 possession or introduction of an explosive, incendiary device or any ammunition;
- xiii. *.251 rioting; or
- xiv. *.252 encouraging others to riot;

4. Escape history during the previous five years of incarceration from the date of review regardless of the age or legal status of the inmate (see the Escape History Scale at N.J.A.C. 10A:9-2.9);

5. Number of disciplinary reports within the previous 18 months of incarceration prior to review, to include previous incarcerations. The following Number of Disciplinary Reports Scale shall be used to assess an inmate's disciplinary report history and to assign points on the Reclassification Instrument for Male Inmates:

- i. Inmates with zero disciplinary reports in the last 18 months shall receive minus two points;
- ii. Inmates with zero disciplinary reports in the last 12 months shall receive minus one point;
- iii. Inmates with zero disciplinary reports in the last six months shall receive zero points;
- iv. Inmates with one disciplinary report in the last six months shall receive two points; or
- v. Inmates with two or more disciplinary reports in the last six months shall receive four points;

6. Most severe disciplinary infraction received in the previous 12 months of incarceration (see the Severity of Offense — Disciplinary Infractions Scales at N.J.A.C. 10A:9-2.11);

7. Current age. The following Current Age Scale shall be used to assess an inmate's current age and to assign points on the Reclassification Instrument for Male Inmates:

- i. Inmates 24 years of age or younger shall receive one point;
- ii. Inmates 25 to 38 years of age shall receive zero points; or
- iii. Inmates 39 years of age or older shall receive minus two points; and

8. Program participation in correctional facility programs during the current admission. The following Program Participation Scale shall be used to assess an inmate's correctional facility program participation and to assign points on the Reclassification Instrument for Male Inmates:

- i. Inmates with no program participation shall receive zero points;

ii. Inmates who are currently participating in or have completed a program within the past 12 months shall receive minus two points; or

iii. Inmates currently on a program waiting list shall receive minus one point.

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

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

Recodified from N.J.A.C. 10A:9-2.5 and amended by R.2007 d.379, effective December 17, 2007.

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

Section was "Objective criteria for the Reclassification Instrument". Rewrote the section.

Former N.J.A.C. 10A:9-2.6, Severity of Offense Scale, recodified to N.J.A.C. 10A:9-2.8.

10A:9-2.7 Objective criteria for the Reclassification Instrument for Female Inmates

(a) Upon review of the inmate's classification file, each of the criteria established in (b) below shall be assessed by a Technical Assistant or above, and assigned points in accordance with the assessment scales indicated. The total points shall determine the custody status score on the Reclassification Instrument for Female Inmates as follows (see N.J.A.C. 10A:9-4.3, Custody status):

1. An inmate/parole violator score of 15 points or more shall indicate a recommendation for placement into maximum custody status;

2. An inmate/parole violator score of seven to 14 points shall indicate a recommendation for placement into medium custody status;

3. An inmate/parole violator score of six points or less shall indicate a recommendation for placement into minimum custody status.

(b) The objective criteria for the Reclassification Instrument for Female Inmates are as follows:

1. Severity of offense based on the most serious offense in the present commitment (see the Severity of Offense Scale at N.J.A.C. 10A:9-2.8);

2. Prior assaultive offense history based on the most serious assaultive offense in the last 10 years of criminal history (see the Severity of Offense Scale at N.J.A.C. 10A:9-2.8);

3. History of institutional violence based on institutional disciplinary reports for any offense involving a weapon or any of the following offenses during the previous five years of incarceration from the date of review (see the Institutional Violence Scale at N.J.A.C. 10A:9-2.12):

- i. *.001 killing;
- ii. *.002 assaulting any person;
- iii. *.003 assaulting any person with a weapon;

iv. *.004 fighting with another person;

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

vi. *.007 hostage taking;

vii. *.050 sexual assault;

viii. *.151 setting a fire;

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

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

xi. *.251 rioting; or

xii. *.252 encouraging others to riot;

4. Escape history during the previous five years of incarceration from the date of review regardless of the age or legal status of the inmate (see the Escape History Scale at N.J.A.C. 10A:9-2.10);

5. Number of disciplinary reports within the previous 18 months of incarceration prior to review, to include previous incarcerations. The following Number of Disciplinary Reports Scale shall be used to assess an inmate's disciplinary report history and to assign points on the Reclassification Instrument for Female Inmates:

i. Inmates with zero disciplinary reports in the last 18 months shall receive minus two points;

ii. Inmates with zero disciplinary reports in the last 12 months shall receive minus one point;

iii. Inmates with zero disciplinary reports in the last six months shall receive zero points;

iv. Inmates with one disciplinary report in the last six months shall receive one point; or

v. Inmates with two or more disciplinary reports in the last six months shall receive two points;

6. Most severe disciplinary infraction received in the previous 12 months (see the Severity of Offense—Disciplinary Infractions Scale at N.J.A.C. 10A:9-2.13);

7. Current age. The following Current Age Scale shall be used to assess an inmate's current age and to assign points on the Reclassification Instrument for Female Inmates:

i. Inmates 24 years of age or younger shall receive one point;

ii. Inmates 25 to 38 years of age shall receive zero points; or

iii. Inmates 39 years of age or older shall receive minus two points; and

8. Program participation in correctional facility programs during the current admission. The following Program Participation Scale shall be used to assess an inmate's correctional facility program participation and to assign points on the Reclassification Instrument for Female Inmates.

- i. Inmates with no program participation shall receive zero points;
- ii. Inmates who are currently participating in or have completed a program within the past 12 months shall receive minus two points; or
- iii. Inmates currently on a program waiting list shall receive minus one point.

New Rule, R.2007 d.379, effective December 17, 2007.

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

Former N.J.A.C. 10A:9-2.7, Escape History Scale, recodified to N.J.A.C. 10A:9-2.9.

10A:9-2.8 Severity of Offense Scale

(a) The Severity of Offense Scale shall be used to assess the seriousness of an inmate's current offenses and an inmate's prior assaultive offense history. The Severity of Offense Scale has the following levels:

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

(b) The following offenses appear at the highest level of the Severity of Offense Scale. Inmates with a conviction for any of the below listed offenses shall receive six points on the Initial and Reclassification Instruments:

1. N.J.S.A. 2C:11-1 et seq. Criminal Homicide—all 1st degree offenses;
2. N.J.S.A. 2C:12-1 et seq. Assault, Reckless Endangering; Threats—all 1st and 2nd degree offenses (except N.J.S.A. 2C:12-11(a) Disarming a Law Enforcement, Corrections Officer—2nd degree which is considered to be at the high level);
3. N.J.S.A. 2C:13-1 et seq. Kidnapping and Related Offenses: Coercion—all 1st degree offenses;
4. N.J.S.A. 2C:14-1 et seq. Sexual Offenses—all 1st degree offenses;
5. N.J.S.A. 2C:15-1 et seq. Robbery—all 1st degree offenses;
6. N.J.S.A. 2C:29-5(a) Escape—2nd degree;
7. N.J.S.A. 2C:29-5(c) Escape—2nd degree;

8. N.J.S.A. 2C:35-3 Leader of Narcotics Trafficking Network—1st degree;

9. N.J.S.A. 2C:35-4 Maintaining or Operating a Controlled Dangerous Substance Production Facility—1st degree; or

10. Any offense for which an offender was sentenced to an extended term of imprisonment pursuant to N.J.S.A. 2C:44-3.

(c) The following offenses appear at the high level of the Severity of Offense Scale. Inmates with a conviction for any of the below listed offenses shall receive four points on the Initial and Reclassification Instruments:

1. N.J.S.A. 2C:11-1 et seq. Criminal Homicide—all 2nd degree offenses (except N.J.S.A. 2C:11-6 Aiding Suicide—2nd degree which is considered to be at the low moderate level);

2. N.J.S.A. 2C:12-11(a) Disarming a Law Enforcement, Corrections Officer—2nd degree;

3. N.J.S.A. 2C:13-1 et seq. Kidnapping and Related Offenses: Coercion—all 2nd degree offenses (except N.J.S.A. 2C:13-4(a) Interference with Custody—2nd degree which is considered to be at the moderate level);

4. N.J.S.A. 2C:14-1 et seq. Sexual Offenses—all 2nd and 3rd degree offenses;

5. N.J.S.A. 2C:15-1 et seq. Robbery—all 2nd degree offenses;

6. N.J.S.A. 2C:17-1 et seq. Arson, Criminal Mischief, and other Property Related Offenses—all 1st and 2nd degree offenses;

7. N.J.S.A. 2C:24-1 et seq. Offenses Against the Family, Children and Incompetents—all 2nd degree offenses;

8. N.J.S.A. 2C:29-5(a) Escape—3rd degree;

9. N.J.S.A. 2C:29-5(c) Escape—3rd degree;

10. N.J.S.A. 2C:33-1 et seq. Riot and Related Offenses—all 2nd degree offenses;

11. N.J.S.A. 2C:34-1 et seq. Public Indecency—all 2nd degree offenses;

12. N.J.S.A. 2C:35-1 et seq. Controlled Dangerous Substances—all 1st degree offenses (except N.J.S.A. 2C:35-3 Leader of Narcotics Trafficking Network—1st degree and N.J.S.A. 2C:35-4 Maintaining or Operating a Controlled Dangerous Substance Production Facility—1st degree which are considered to be at the highest level); or

13. N.J.S.A. 2C:41-1 et seq. Racketeering—1st degree.

(d) The following offenses appear at the moderate level of the Severity of Offense Scale. Inmates with a conviction of any of the below listed offenses shall receive two points on the Initial and Reclassification Instruments:

1. N.J.S.A. 2C:12-1 et seq. Assault, Reckless Endangering; Threats—all 3rd degree offenses;
2. N.J.S.A. 2C:13-4(a) Interference with Custody—2nd degree;
3. N.J.S.A. 2C:18-1 et seq. Burglary and Other Criminal Intrusion—all 2nd degree offenses;
4. N.J.S.A. 2C:20-1 et seq. Theft and Related Offenses—all 2nd degree offenses;
5. N.J.S.A. 2C:21-1 et seq. Forgery and Fraudulent Practices—all 2nd degree offenses;
6. N.J.S.A. 2C:24-1 et seq. Offenses Against the Family, Children and Incompetents—all 3rd degree offenses;
7. N.J.S.A. 2C:27-1 et seq. Bribery and Corrupt Influence—all 2nd degree offenses;
8. N.J.S.A. 2C:28-1 et seq. Perjury and Other Falsification in Official Matters—all 2nd degree offenses;
9. N.J.S.A. 2C:29-1 et seq. Obstructing Governmental Operations; Escapes—all 2nd degree offenses (except N.J.S.A. 2C:29-5(a) or (c) Escape—2nd degree which is considered to be at the highest level);
10. N.J.S.A. 2C:30-1 et seq. Misconduct in Office: Abuse of Office—all 2nd degree offenses;
11. N.J.S.A. 2C:33-1 et seq. Riot, Disorderly Conduct and Related Offenses—all 3rd degree offenses;
12. N.J.S.A. 2C:35-1 et seq. Controlled Dangerous Substances—all 2nd degree offenses;
13. N.J.S.A. 2C:39-1 et seq. Firearms, Other Dangerous Weapons and Instruments of Crime—all 2nd degree offenses;
14. N.J.S.A. 2C:40-1 et seq. Other Offenses Relating to Public Safety—all 3rd degree offenses; or
15. N.J.S.A. 2C:41-1 et seq. Racketeering—all 2nd degree offenses.

(e) The following offenses appear at the low moderate level of Severity of Offense Scale. Inmates with a conviction of any of the below listed offenses shall receive one point on the Initial Instrument and zero points on the Reclassification Instrument:

1. N.J.S.A. 9:6-3 Penalty, Cruelty and Neglect; Child in Custody of Cruelty Prevention Society; Support Payment Order—all 4th degree offenses;
2. N.J.S.A. 2C:7-2(a) Failure to Register as a Sex Offender—4th degree;
3. N.J.S.A. 2C:11-5 Vehicular Homicide—3rd degree;
4. N.J.S.A. 2C:11-6 Aiding Suicide—2nd degree;
5. N.J.S.A. 2C:12-1 et seq. Assault, Reckless Endangering; Threats—all 4th degree offenses;

6. N.J.S.A. 2C:13-1 et seq. Kidnapping and Related Offenses: Coercion—all 3rd degree offenses;
7. N.J.S.A. 2C:14-1 et seq. Sexual Offenses—all 4th degree offenses;
8. N.J.S.A. 2C:14-4(a) Lewdness—Disorderly Persons Offense;
9. N.J.S.A. 2C:17-1 et seq. Arson, Criminal Mischief and Other Property Destruction—all 3rd degree offenses;
10. N.J.S.A. 2C:18-1 et seq. Burglary and Other Criminal Intrusion—all 3rd degree offenses;
11. N.J.S.A. 2C:20-1 et seq. Theft and Related Offenses—all 3rd degree offenses;
12. N.J.S.A. 2C:21-1 et seq. Forgery and Fraudulent Practices—all 3rd degree offenses;
13. N.J.S.A. 2C:24-1 et seq. Offenses Against the Family, Children and Incompetents—all 4th degree offenses;
14. N.J.S.A. 2C:27-1 et seq. Bribery and Corrupt Influence—all 3rd degree offenses;
15. N.J.S.A. 2C:28-1 et seq. Perjury and Other Falsification in Official Matters—all 3rd degree offenses;
16. N.J.S.A. 2C:29-1 et seq. Obstructing Governmental Operations; Escapes—all 3rd degree offenses (except N.J.S.A. 2C:29-5(a) or (c) Escape—3rd degree which is considered to be at the high level);
17. N.J.S.A. 2C:30-1 et seq. Misconduct in Office: Abuse of Office—all 3rd degree offenses;
18. N.J.S.A. 2C:33-1 et seq. Riot, Disorderly Conduct and Other Related Offenses—all 4th degree offenses;
19. N.J.S.A. 2C:34-1 et seq. Public Indecency—all 3rd degree offenses;
20. N.J.S.A. 2C:35-1 et seq. Controlled Dangerous Substances—all 3rd degree offenses;
21. N.J.S.A. 2C:37-1 et seq. Gambling Offenses—all 3rd degree offenses;
22. N.J.S.A. 2C:39-1 et seq. Firearms, Other Dangerous Weapons and Instruments of Crime—all 3rd degree offenses; or
23. N.J.S.A. 2C:40-1 et seq. Other Offenses Relating to Public Safety—all 4th degree offenses.

(f) The following offenses appear at the low level of the Severity of Offense Scale. Inmates with a conviction for any of the below listed offenses shall receive zero points on the Initial and Reclassification Instruments:

1. Any Disorderly Persons Offense (except N.J.S.A. 2C:14-4(a) Lewdness which is considered to be at the low moderate level);

2. N.J.S.A. 2C:11-6, Aiding Suicide—4th degree;
3. N.J.S.A. 2C:13-1 et seq. Kidnapping and Related Offenses: Coercion—all 4th degree offenses;
4. N.J.S.A. 2C:17-1 et seq. Arson, Criminal Mischief and Other Property Destruction—all 4th degree offenses;
5. N.J.S.A. 2C:18-1 et seq. Burglary and Other Criminal Intrusion—all 4th degree offenses;
6. N.J.S.A. 2C:20-1 et seq. Theft and Related Offenses—all 4th degree offenses;
7. N.J.S.A. 2C:21-1 et seq. Forgery and Fraudulent Practices—all 4th degree offenses;
8. N.J.S.A. 2C:27-1 et seq. Bribery and Corrupt Influence—all 4th degree offenses;
9. N.J.S.A. 2C:28-1 et seq. Perjury and Other Falsification in Official Matters—all 4th degree offenses;
10. N.J.S.A. 2C:29-1 et seq. Obstructing Governmental Operations; Escapes—all 4th degree offenses;
11. N.J.S.A. 2C:30-1 et seq. Misconduct in Office: Abuse of Office—all 4th degree offenses;
12. N.J.S.A. 2C:34-1 et seq. Public Indecency—all 4th degree offenses;
13. N.J.S.A. 2C:35-1 et seq. Controlled Dangerous Substances—all 4th degree offenses;
14. N.J.S.A. 2C:37-1 et seq. Gambling Offenses—all 4th degree Offenses;
15. N.J.S.A. 2C:39-1 et seq. Firearms, Other Dangerous Weapons and Instruments of Crime—all 4th degree offenses; or
16. N.J.S.A. 2C:40-1 et seq. Other Offenses Relating to Public Safety—all 4th degree offenses.

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

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

Recodified from N.J.A.C. 10A:9-2.6 by R.2007 d.379, effective December 17, 2007.

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

Former N.J.A.C. 10A:9-2.8, Institutional Violence Scale, recodified to N.J.A.C. 10A:9-2.11.

10A:9-2.9 Escape History Scale for Male Inmates

(a) The following Escape History Scale for Male Inmates shall be used to assess an inmate's escape history and assign points on the Initial and Reclassification Instruments for Male Inmates:

1. Inmates with zero escapes shall receive zero points;
2. Inmates with an escape or attempted escape from minimum or community custody with no actual or threatened violence:
 - i. Over one year ago shall receive one point; or

- ii. Within the last year shall receive three points; or
3. Inmates with an escape or attempted escape from medium custody or above, or an escape from minimum or community custody with actual or threatened violence:
 - i. Over one year ago shall receive five points; or
 - ii. Within the last year shall receive seven points.

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

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

Recodified from N.J.A.C. 10A:9-2.7 and amended by R.2007 d.379, effective December 17, 2007.

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

Section was "Escape History Scale". In (a), inserted "for Male Inmates" twice.

Former N.J.A.C. 10A:9-2.9, Alcohol/Drug Use History Scale, repealed.

10A:9-2.10 Escape History Scale for Female Inmates

(a) The following Escape History Scale for Female Inmates shall be used to assess an inmate's escape history and assign points on the Initial and Reclassification Instruments for Female Inmates:

1. Inmates with zero escapes shall receive zero points;
2. Inmates with an escape or attempted escape from minimum or community custody with no actual or threatened violence:
 - i. Over one year ago shall receive one point; or
 - ii. Within the last year shall receive three points; or
3. Inmates with an escape or attempted escape from medium custody or above, or an escape from minimum or community custody with actual or threatened violence:
 - i. Over one year ago shall receive four points; or
 - ii. Within the last year shall receive six points.

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

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

Repeal and New Rule, R.2007 d.379, effective December 17, 2007.

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

Section was "Current Detainer/Open Charge Scale".

10A:9-2.11 Institutional Violence Scale for Male Inmates

(a) The following Institutional Violence Scale shall be used to assess an inmate's institutional violence history and to assign points on the Initial and Reclassification Instruments for Male Inmates:

1. Inmates with zero institutional disciplinary reports shall receive zero points;
2. Inmates with an institutional disciplinary report including violence not involving use of a weapon or not resulting in serious injury shall receive five points; or

3. Inmates with an institutional disciplinary report including violence involving use of a weapon and/or resulting in serious injury shall receive seven points.

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

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

Recodified from N.J.A.C. 10A:9-2.8 and amended by R.2007 d.379, effective December 17, 2007.

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

Section was "Institutional Violence Scale". In the introductory paragraph of (a), inserted "for Male Inmates"; and in (a)2, substituted "five" for "three".

Former N.J.A.C. 10A:9-2.11, Severity of Offense — Disciplinary Infractions Scale, recodified to N.J.A.C. 10A:9-2.13.

10A:9-2.12 Institutional Violence Scale for Female Inmates

(a) The following Institutional Violence Scale for Female Inmates shall be used to assess an inmate's institutional violence history and to assign points on the Initial and Reclassification Instruments for Female Inmates:

1. Inmates with zero institutional disciplinary reports shall receive zero points;
2. Inmates with an institutional disciplinary report including violence not involving use of a weapon or not resulting in serious injury shall receive three points; or
3. Inmates with an institutional disciplinary report including violence involving use of a weapon and/or resulting in serious injury shall receive five points.

New Rule, R.2007 d.379, effective December 17, 2007.

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

Former N.J.A.C. 10A:9-2.12, Override Code References Index, recodified to N.J.A.C. 10A:9-2.14.

10A:9-2.13 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 of incarceration. The Severity of Offense—Disciplinary Infractions 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, possession, distribution, sale, or intent to distribute or sell, an electronic communication device, equipment or peripheral that is capable of transmitting, receiving or storing a message, image or data that is not authorized for use or retention (see "electronic communication device" definition at N.J.A.C. 10A:1-2.2);

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 Re-classification Instrument.

1. *.004 fighting with another person;

2. .009A misuse, possession, distribution, sale or intent to distribute or sell, an electronic communication device, equipment or peripheral that is capable of transmitting, receiving or storing data and/or electronically transmitting a message, image or data that is not authorized for use or retention by an inmate who is assigned to a Residential Community Release Program (see “electronic communication device” definition at N.J.A.C. 10A:1-2.2);

3. *.011 possession or exhibition of anything related to a security threat group;

4. .013 unauthorized physical contact with any person, such as, but not limited to, physical contact not initiated by a staff member, volunteer or visitor;

5. .051 engaging in sexual acts with others;

6. .052 making sexual proposals or threats to another;

7. *.054 refusal to register as a sex offender or any refusal to register as required by law;

8. .103 wearing a disguise or mask;

9. *.150 tampering with fire alarms, fire equipment or fire suppressant equipment;

10. .152 destroying, altering, or damaging government property, or the property of another person;

11. *.153 stealing (theft);

12. .204A use by an inmate who is assigned to a Residential Community Program of any prohibited substances such as drugs, intoxicants or related paraphernalia not prescribed for the inmate by the medical or dental staff;

13. *.205 misuse of authorized medication;

14. .206 possession of money or currency (\$50.00 or less) unless specifically authorized;

15. *.207 possession of money or currency (in excess of \$50.00) unless specifically authorized;

16. .208 possession of property belonging to another person;

17. .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;

18. .211 possessing any staff member’s clothing and/or equipment;

19. .254 refusing to work, or to accept a program or housing unit assignment;

20. .256 refusing to obey an order of any staff member;

21. .257 violating a condition of any community release program;

22. *.260 refusing to submit to mandatory medical or other testing such as, but not limited to, mandatory testing required by law or court order;

23. .301 unexcused absence from work or any assignment; being late for work;

24. .304 using abusive or obscene language to a staff member;

25. .305 lying, providing a false statement to a staff member;

26. .351 counterfeiting, forging, or unauthorized reproduction or use of any document not enumerated in prohibited act *.352;

27. *.360 unlawfully obtaining or seeking to obtain personal information pertaining to an inmate’s victim or the victim’s family;

28. .401 participating in an unauthorized meeting or gathering;

- 29. .402 being in an unauthorized area;
- 30. .451 failure to follow safety or sanitation regulations;
- 31. .452 using any equipment or machinery which is not specifically authorized;
- 32. .453 using any equipment or machinery contrary to instructions or posted safety standards;
- 33. .501 failure to stand count;
- 34. .502 interfering with the taking of count;
- 35. .552A being intoxicated while the inmate is assigned to a Residential Community Program;
- 36. .601 gambling;
- 37. .602 preparing or conducting a gambling pool;
- 38. .603 possession of gambling paraphernalia;
- 39. .701 unauthorized use of mail or telephone;
- 40. .702 unauthorized contacts with the public;
- 41. .703 correspondence or conduct with a visitor in violation of regulations;
- 42. .705 commencing or operating a business or group for profit or commencing or operating a non-profit enterprise without the approval of the Administrator;
- 43. .706 soliciting funds and/or noncash contributions from donors within or without the correctional facility except where permitted by the Administrator;
- 44. .707 failure to keep a scheduled appointment with medical, dental or other professional staff;
- 45. .709 failure to comply with a written rule or regulation of the correctional facility;
- 46. .753 purchasing anything on credit; or
- 47. .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 infraction 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.

Amended by R.2004 d.294, effective August 2, 2004.

See: 36 N.J.R. 1657(a), 36 N.J.R. 3552(a).

In (d), added a new 11 and 34 and recodified former 11 through 32 as 12 through 33 and former 33 through 44 as 35 through 46.

Emergency amendment, R.2005 d.435, effective November 15, 2005, (to expire January 14, 2006).

See: 37 N.J.R. 4575(a).

In (c)4, substituted “,” for “or” in two places and added “distribution, sale, or intent to distribute or sell, an” “communication device,” “or peripheral that is capable of transmitting, receiving or storing data and/or electronically transmitting a message, image or data that is” and “(see “electronic communication device” definition at N.J.A.C. 10A:1-2.2).” Adopted concurrent amendment, R.2006 d.58, effective January 11, 2006.

See: 37 N.J.R. 4575(a), 38 N.J.R. 993(a).

Provisions of R.2005, d.435, adopted without change.

Recodified from N.J.A.C. 10A:9-2.11 and amended by R.2007 d.379, effective December 17, 2007.

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

In the introductory paragraph of (a), inserted “of incarceration”.

Amended by R.2009 d.237, effective August 3, 2009.

See: 41 N.J.R. 1645(a), 41 N.J.R. 2925(a).

In (d)6, inserted “or any refusal to register as required by law”.

Amended by R.2009 d.236, effective August 3, 2009.

See: 41 N.J.R. 1649(a), 41 N.J.R. 2927(a).

Added (d)2; and recodified former (d)2 through (d)46 as (d)3 through (d)47.

10A:9-2.14 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 status 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. When an override is invoked, Form OC-001 Request for Override Approval must be completed and forwarded to the Division of Operations for final approval:

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 detainee 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:9-4.7;

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:9-4.7;

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:9-4.8;

7. Code F: Medium custody status assignment of above pending U.S. Immigration and Customs Enforcement (ICE) 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 pursuant to N.J.A.C. 10A:9-4.6, due to a disciplinary sanction for a prohibited act identified in a zero tolerance policy (see N.J.A.C. 10A:4-5.1 and 12).

(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.

Emergency amendment, R.2005 d.435, effective November 15, 2005, (to expire January 14, 2006).

See: 37 N.J.R. 4575(a).

Rewrote (a)17.

Adopted concurrent amendment, R.2006 d.58, effective January 11, 2006.

See: 37 N.J.R. 4575(a), 38 N.J.R. 993(a).

Provisions of R.2005, d.435, adopted without change.

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (a)17, updated the N.J.A.C. reference.

Amended by R.2007 d.199, effective July 2, 2007.

See: 39 N.J.R. 747(a), 39 N.J.R. 2537(a).

In (a)7, substituted "U.S. Immigration and Customs Enforcement (ICE)" for "United States Immigration and Naturalization Service (USINS)".

Recodified from N.J.A.C. 10A:9-2.12 and amended by R.2007 d.379, effective December 17, 2007.

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

In the introductory paragraph of (a), substituted "status" for "level" and inserted the last sentence.

Amended by R.2009 d.237, effective August 3, 2009.

See: 41 N.J.R. 1645(a), 41 N.J.R. 2925(a).

In (a)3, (a)5 and (a)6, updated the N.J.A.C. reference.

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.

(b) Subcommittees may be created to address specific topics identified by the I.C.C.

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.

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

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

Added (b).

Amended by R.2014 d.027, effective February 3, 2014.

See: 45 N.J.R. 13(a), 46 N.J.R. 297(a).

In the introductory paragraph of (a), inserted a comma following "I.C.C."; and in (a)7, substituted "administrative segregation" for "Administrative Segregation".

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.

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;

(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 residential community programs shall be made after consideration of the following factors:

1. The objective classification scoring results (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. Residential community program adjustment;
8. Educational history and needs;
9. Vocational history and needs;
10. Military history;
11. Nature and circumstance of present offense;
12. Prior offense record;
13. Records from previous confinement;
14. Detainers on file or pending;
15. Substance dependency and/or involvement;
16. Sexual adjustment;
17. History of escape, attempted escape or propensity for escape;
18. Current psychological and/or psychiatric reports;
19. Medical history and recommendations;
20. Arson history;

21. A conviction for any offense that resulted in a life sentence when one or more of the following aggravating circumstances are in the inmate's present or prior offense history (see N.J.S.A. 2C:44-1a.)

i. Grave or serious harm inflicted on a victim, including whether or not the offender knew or reasonably should have known that the victim was particularly vulnerable or incapable of resistance due to advanced age, ill health, or extreme youth, or for any other reason, the victim was substantially incapable of exercising normal physical or mental power of resistance;

ii. A substantial likelihood that the offender was involved in organized criminal activity;

iii. The offender committed the present offense pursuant to an agreement that he or she either pay or be paid for the commission of the offense and the financial incentive was beyond that inherent in the offense itself;

iv. The offender committed the offense against a police or other law enforcement officer, correctional employee or fireman, acting in the performance of his or her duties while in uniform or exhibiting evidence of his or her authority and/or the offender committed the offense because of the status of the victim as a public servant;

22. Needs of the correctional facility; and/or

23. 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.

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)14, substituted "Substance" for "Drug".
Amended by R.2007 d.42, effective February 5, 2007.
See: 38 N.J.R. 4389(a), 39 N.J.R. 489(a).

In introductory paragraph of (a), substituted "residential community programs" for "community release programs"; added new (a)7; recodified former (a)7 through (a)19 as (a)8 through (a)20; added (a)21; and recodified former (a)20 and (a)21 as (a)22 and (a)23.
Amended by R.2007 d.379, effective December 17, 2007.
See: 39 N.J.R. 2445(a), 39 N.J.R. 5340(b).

Section was "Institutional Classification Committee (I.C.C.) decision making criteria". In (a)1, deleted "as indicated on form CRAU-006 or CRAU-007" following "results".

Case Notes

Inmate's halfway house placement does not involve a liberty interest giving rise to due process rights; the return of an inmate from a halfway house to a prison does not impose an atypical or significant hardship on the inmate and an inmate does not have a protected liberty interest in serving his or her sentence in a particular correctional facility. *Shabazz v. New Jersey Dep't of Corrections*, 385 N.J. Super. 117, 896 A.2d 473, 2006 N.J. Super. LEXIS 103 (App.Div. 2006).

Regulation that allows prison superintendent and Institutional Classification Committee to increase custody status of an inmate who has been granted reduced custody status does not give superintendent and committee unbridled discretion to make that determination; discretion must

be circumscribed by the factors, as listed in another regulation, that govern custody status decisions. *Smith v. Dept. of Corrections*, 346 N.J. Super. 24, 786 A.2d 165(A.D. 2001).

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

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

10A:9-3.4 Institutional classification

(a) Upon transfer to a correctional facility/unit 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 status assignment and/or correctional facility/unit 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 institutional 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).

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

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

In (a), substituted "transfer" for "assignment" and inserted "unit" following "facility/"; (c), inserted "unit" following "facility/" in the introductory paragraph; in (d), substituted "institutional" for "initial" in the introductory paragraph.

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

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

In the introductory paragraph of (c), substituted "status" for "level".

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/unit assignment prior to his or her scheduled review date, the review shall be re-scheduled 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) The psychological status of each inmate shall be evaluated annually, or more often when deemed necessary.

(h) An inmate shall be notified of his or her review date at least 48 hours prior to the review date. 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.

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

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

In (b), inserted "unit" following "facility"; rewrote (g); in (h), substituted "at least" for "no later than" and "the review date" for "its occurrence" in the introductory paragraph.

Case Notes

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

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

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

10A:9-3.6 Special reviews

(a) Inmates desiring a special review of their case because of a change in status may submit a written request indicating the reason for the review to the staff member(s) designated by the Administrator.

(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 Supervising Classification Officer.

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

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

In (a), substituted "indicating" for "which indicates" and "Administrator" for "Superintendent".

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

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

In (b), substituted "Supervising Classification Officer" for "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 upon referral by a staff member or a correctional facility committee for the purpose of making a change in:

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

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

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

In (a), substituted "upon referral" for "if it has been referred" and "a correctional facility" for "an institutional".

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 at 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).
 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), substituted "at" for "on".

10A:9-3.9 Educational assignments

(a) Determining factors in referring an inmate to an educational program may include, but are not limited to:

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.

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 "but are not limited to" following "include" in the introductory paragraph.

10A:9-3.10 Counseling assignments

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

(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).

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 "for counseling or therapy" following "members".

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 institutional program shall be made by the I.C.C. Reassignments may be made upon inmate or staff request, when deemed necessary.

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), substituted "institutional" for "initial" and "when deemed necessary" for "as the need arises".

10A:9-3.12 Residential community programs

The Institutional Classification Committee (I.C.C.) may approve an eligible inmate for participation in a residential community program in accordance with applicable provisions of N.J.A.C. 10A:20 when the inmate has been classified to full minimum custody status and meets the criteria for assignment to the program.

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".

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

Deleted "in which the inmate will participate" following "program".

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

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

Rewrote the section.

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

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

Section was "Community release programs". Rewrote the section.
 Petition for Rulemaking.

See: 46 N.J.R. 715(b), 886(d).

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), the I.C.C. of the correctional facility where the inmate is currently housed 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 a 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) In cases where an inmate's correctional facility adjustment and/or custody status indicates that a transfer to another correctional facility is appropriate, or when transfer is requested by an inmate, 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 transfer is requested signs Form CRAF-003, the sending facility shall forward the completed form to the intake coordinator, or designee at the CRAF Intake Unit for submission to the Director, Division of Operations or designee for consideration for approval/disapproval.

(d) If, in the opinion of the Administrator of the correctional facility in which the inmate is housed, an immediate transfer is necessary, the Administrator shall notify the Assistant Commissioner or Director, Division of Operations of the proposed transfer. With the verbal approval of the Assistant Commissioner or designee, the transfer shall be made as soon as possible.

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

(f) In determining the need for an inmate's emergency transfer, the Administrator shall consider the following factors, but is not limited to these factors:

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

(g) All inmates transferred on an emergency basis shall be evaluated on the Reclassification Instrument at the receiving facility as soon as possible.

(h) The I.C.C. at CRAF shall confirm all transfers and/or assignments of inmates to adult county correctional facilities contracted to house State-sentenced inmates.

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).

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

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

In (a), deleted "at Clinton" following "(EMCF)" and inserted "of the correctional facility where the inmate is currently housed" following I.C.C.

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

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

Rewrote (c); added (d) through (h).

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

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

In (c), substituted "an" for "a" following "requested by"; and deleted "or the Special Classification Committee (S.C.C.)" preceding "for consideration".

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 Close Supervision 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.

Amended by R.2014 d.027, effective February 3, 2014.

See: 45 N.J.R. 13(a), 46 N.J.R. 297(a).

In (d)1 and (e), substituted "administrative segregation" for "Administrative Segregation"; and in (e), substituted "Close Supervision" for "Segregation".

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

Inmate's halfway house placement does not involve a liberty interest giving rise to due process rights; the return of an inmate from a halfway house to a prison does not impose an atypical or significant hardship on the inmate and an inmate does not have a protected liberty interest in serving his or her sentence in a particular correctional facility. *Shabazz v. New Jersey Dep't of Corrections*, 385 N.J. Super. 117, 896 A.2d 473, 2006 N.J. Super. LEXIS 103 (App.Div. 2006).

Commissioner of Corrections empowered to reclassify camp inmates whose records reflected convictions of homicide; Commissioner's non-individualized reclassification of prison camp inmates did not implicate prisoner's federally protected liberty interests or require due process

type hearing; Commissioner's reclassification was inconsistent with departmental regulations. *Jenkins v. Fauver*, 108 N.J. 239, 528 A.2d 563 (1987).

10A:9-4.2 No right to reduced custody

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

Case Notes

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

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

10A:9-4.3 Custody status

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

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

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

(d) Inmates classified as "gang minimum custody status" may be assigned to activities or jobs which routinely require them to move outside the security perimeter of the correctional facility, but on the grounds of the facility and under continuous supervision of a custody staff member, civilian instructor or other employee authorized to supervise inmates. The time served in gang minimum custody status shall be at the discretion of the Institutional Classification Committee (I.C.C.).

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

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

(f) Inmates must be classified as "community custody status" in order to participate in residential community programs (see N.J.A.C. 10A:20) or to be 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.

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

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

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

In (d), inserted "perimeter" following "security" and substituted "custody staff member" for "correction officer" preceding "civilian".

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

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

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

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

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

In (f), substituted "residential community programs" for "community release programs", "or to be assigned" for "or be assigned" and "Full" for "Except to participate in the Electronic Monitoring/Home Confinement Program, full".

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

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

Section was "Custody levels".

Petition for Rulemaking.

See: 46 N.J.R. 715(b), 886(d).

Case Notes

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

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

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

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

10A:9-4.4 Authority of classification committees

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

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

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

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

(c) The I.C.C. at Edna Mahan Correctional Facility for Women (EMCF) is authorized to assign eligible inmates directly to full minimum custody status without the prerequisite of a successful completion of time in gang minimum custody status.

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

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

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

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

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

Revised (c).

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

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

In (b), deleted "whom it transfers or reassigns to another correctional facility or unit" following "status of any inmate"; and in (c), substituted "of a successful completion of time in gang minimum custody" for "service of time required for gang minimum custody".

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

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

In (a), substituted "Administrator, Associate Administrator" for "Superintendent" in 1, deleted "such" preceding "custody" and inserted "initiated due to conditions in (a)1 above" following "changes" in 2.

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

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

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

Amended by R.2004 d.355, effective September 20, 2004.

See: 36 N.J.R. 2293(a), 36 N.J.R. 4316(b).

Added (c).

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

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

In the introductory paragraph of (a), substituted "status" for "levels"; and in (b), substituted "I.C.R.C." for "I.I.C.C.".

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

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

1. Field account of the present offense;
2. Prior criminal record;
3. Previous incarcerations;
4. Correctional facility adjustment;
5. Residential community program adjustment;

- 6. The objective classification score;
- 7. Reports from professional and custody staff;
- 8. A conviction for a present or prior offense that resulted in a life sentence; and
- 9. Any reason which, in the opinion of the Administrator and the I.C.C., relates to the best interests of the inmate or the safe, orderly operation of the correctional facility or the safety of the community or public at large.

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

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

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

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

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

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

Amended by R.1988 d.30, effective January 19, 1988.
See: 19 N.J.R. 1782(b), 20 N.J.R. 194(b).

Added text to (f)6 "or the safety of the public at large or community."
Amended by R.1988 d.106, effective March 7, 1988.
See: 19 N.J.R. 2235(a), 20 N.J.R. 533(a).

Added (b)6.
Amended by R.1990 d.195, effective April 2, 1990.
See: 21 N.J.R. 3050(a), 22 N.J.R. 1143(a).

Deleted (a), recodified and added references to I.C.C.
Amended by R.1992 d.79, effective February 18, 1992.
See: 23 N.J.R. 3721(a), 24 N.J.R. 612(a).

Revised (a)6 and (e)6.
 Amended by R.1997 d.122, effective March 17, 1997.
 See: 29 N.J.R. 80(b), 29 N.J.R. 880(a).

In (a), deleted "which, in their professional judgment, bear upon the inmate's suitability for reduced custody status" following "all relevant factors"; inserted new (a)5; recodified former (a)5 and (a)6 as (a)6 and (a)7; deleted (e)5, providing that serious health problems are reason for increasing custody status; and recodified former (e)6 as (e)5.
 Amended by R.2002 d.190, effective June 17, 2002.
 See: 34 N.J.R. 1082(a), 34 N.J.R. 2030(a).

Substituted "I.C.C." for "Institutional Classification Committee" and "Administrator" for "Superintendent" throughout; (f), substituted "business" for "working" following "five".
 Amended by R.2007 d.42, effective February 5, 2007.
 See: 38 N.J.R. 4389(a), 39 N.J.R. 489(a).

Added new (a)5 and (a)8; and recodified former (a)5, (a)6, and (a)7 as (a)6, (a)7, and (a)9, respectively.
 Petition for Rulemaking.
 See: 41 N.J.R. 2149(a).

Case Notes

Regulation that allows prison superintendent and Institutional Classification Committee to increase custody status of an inmate who has been granted reduced custody status does not give superintendent and committee unbridled discretion to make that determination; discretion must be circumscribed by the factors, as listed in another regulation, that govern custody status decisions. *Smith v. Dept. of Corrections*, 346 N.J. Super. 24, 786 A.2d 165 (A.D. 2001).

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

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

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

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

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

(b) Inmates who have had their contact visit privileges terminated due to a finding of guilt to a prohibited act identified in a zero tolerance policy as established in N.J.A.C. 10A:4-5.1 and 12 shall not be eligible for consideration for any custody status lower than medium custody until after contact visit privileges are reinstated (see N.J.A.C. 10A:18-6.20).

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

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

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

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

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

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

(h) Inmates returned to custody for violation of parole who were sentenced under the No Early Release Act (NERA) at N.J.S.A. 2C:43-7.2 shall be eligible for reduced custody status, which shall be calculated as specified in (i) below.

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

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

2. If the mandatory minimum is less than one-half of the term imposed, the inmate shall serve one-third of the

mandatory minimum. (EXAMPLE: If the term is 20 years and the mandatory minimum is 8 years, the inmate must serve two years and eight months.)

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

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

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

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

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

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

(n) Inmates with detainers from jurisdictions other than New Jersey shall not be eligible to be considered for reduced custody status unless the following provisions apply:

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

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

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

(o) Inmates with an out-of-State or Federal open charge(s) regardless of the date of offense for the following serious offense(s) or any comparable out-of-State 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. Criminal restraint;
7. False imprisonment;
8. Escape;
9. Carjacking; and/or
10. Criminal attempt and/or conspiracy to commit any of the above listed offenses.

(p) Inmates with an out-of-State or Federal open charge(s) for the following offense(s) or any comparable out-of-State 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;
6. Terroristic threat; and/or
7. Criminal attempt and/or conspiracy to commit any of the above listed offenses.

(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. Criminal restraint as defined in N.J.S.A. 2C:13-2;
8. False imprisonment as defined in N.J.S.A. 2C:13-3;
9. Burglary as defined in N.J.S.A. 2C:18-2b and 2A:94-1 et seq.;
10. Escape;
11. Bail jumping as defined in N.J.S.A. 2C:29-7 and 2A:15-1 et seq.;
12. Prohibited weapons and devices as defined in N.J.S.A. 2C:39-3, 4, 5, 7, 9, 10 and 2A:151;
13. Robbery as defined in N.J.S.A. 2C:15-1 and 2A:141.1 et seq.;
14. Terroristic threats as defined in N.J.S.A. 2C:12-3;
15. Maintaining or operating a controlled dangerous substance production facility as defined in N.J.S.A. 2C:35-4;
16. Carjacking as defined in N.J.S.A. 2C:15-2;
17. Criminal attempt to commit any offense listed in this subsection as defined in N.J.S.A. 2C:5-1; and/or
18. Conspiracy to commit any offense listed in this subsection as defined in N.J.S.A. 2C:5-2.

(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. Criminal restraint;
7. False imprisonment;
8. Escape;
9. Carjacking; and/or
10. Criminal attempt and/or conspiracy to commit any of the above listed offenses.

(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;
6. Terroristic threat; and/or
7. Criminal attempt and/or conspiracy to commit any of the above listed offenses.

(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 U.S. Immigration and Customs Enforcement (ICE) has not responded to referrals within 120 calendar days.

(w) Inmates who have a current or prior conviction for escape or attempted escape, or have been found guilty of the prohibited act of escape or attempted escape, shall be eligible for gang or full minimum custody status as follows:

1. Eligible inmates shall be those who are not excluded from reduced custody status pursuant to N.J.A.C. 10A:9-4.7(f), and are otherwise eligible according to the criteria set forth in this subchapter.

2. Inmates who have escaped or attempted to escape from a medium or higher security facility or county jail, within or outside the State of New Jersey shall be eligible when five years have elapsed from the date of apprehension of the escape or from the date of the attempted escape.

3. Inmates who have escaped or attempted to escape from a minimum security facility, detail or unit, within or outside the State of New Jersey, shall be eligible when two years have elapsed from the date of apprehension of the escape or from the date of the attempted escape.

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.

See: 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.

Amended by R.2004 d.355, effective September 20, 2004.

See: 36 N.J.R. 2293(a), 36 N.J.R. 4316(b).

In (a), added I.

Emergency amendment, R.2005 d.435, effective November 15, 2005, (to expire January 14, 2006).

See: 37 N.J.R. 4575(a).

Rewrote (b).

Adopted concurrent amendment, R.2006 d.58, effective January 11, 2006.

See: 37 N.J.R. 4575(a), 38 N.J.R. 993(a).

Provisions of R.2005, d.435, adopted without change.

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (b), updated the first N.J.A.C. reference.

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

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

In (n), inserted "not" and substituted "unless the following provisions apply" for "provided"; and rewrote (w).

Amended by R.2007 d.199, effective July 2, 2007.

See: 39 N.J.R. 747(a), 39 N.J.R. 2537(a).

In (v), substituted "U.S. Immigration and Customs Enforcement (ICE)" for "United States Immigration and Naturalization Service (U.S.I.N.S.)".

Amended by R.2008 d.183, effective July 7, 2008.

See: 40 N.J.R. 1601(a), 40 N.J.R. 4220(a).

Rewrote (h).

Petition for Rulemaking.

See: 41 N.J.R. 2508(a).

Amended by R.2009 d.237, effective August 3, 2009.

See: 41 N.J.R. 1645(a), 41 N.J.R. 2925(a).

In the introductory paragraph of (o) and (p), inserted "an" and "or any comparable out-of-State offense(s)"; added new (o)6 and (o)7; recodified former (o)6 and (o)7 as (o)8 and (o)9; in (o)8, deleted "and/or" from the end; in (o)9, substituted ";" and/or" for a period at the end; added (o)10; in (p)5, deleted "and/or" at the end; in (p)6, substituted ";" and/or" for "offense."; added (p)7; added new (r)7 and (r)8; recodified former (r)7 through (r)14 as (r)9 through (r)16; in (r)15, deleted "and/or" at the end; in (r)16, substituted a semicolon for a period at the end; added (r)17 and (r)18; added new (s)6 and (s)7; recodified former (s)6 and (s)7 as (s)8 and (s)9; in (s)8, deleted "and/or" at the end; in (s)9, substituted ";" and/or" for a period at the end; added (s)10; in (t)5, deleted "and/or" at the end; in (t)6, substituted ";" and/or" for "offense."; added (t)7; and in (w)1, updated the N.J.A.C. reference.

10A:9-4.7 Eligibility limitations 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 and Treatment Center (A.D.T.C.) described in N.J.A.C. 10A:9-4.8(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 has two or more convictions, either present, prior, or a combination of present and prior for the offenses listed below, or attempts or conspiracies to commit these offenses (see N.J.S.A. 2C:5-1 and 5-2) under the laws of this State, or any comparable offenses from any other state or the United States, is not eligible for reduced custody:

1. The sexual offenses are as follows:

2C:13-1	Kidnapping, if a sexual component exists;
2C:13-2	Criminal restraint, if a sexual component exists;
2C:13-3	False imprisonment, if a sexual component exists;
2C:13-6	Luring, enticing child by various means, attempts;
2C:34-1b.(3)	Promotion of prostitution of a child under 18;
2C:34-1b.(4)	Promotion of prostitution of the actor's child, ward, or any other person for whose care the actor is responsible;
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: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; and/or

2. The other offenses are as follows:

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

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

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

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

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

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

- Amended by R.2002 d.190, effective June 17, 2002.
See: 34 N.J.R. 1082(a), 34 N.J.R. 2030(a).
- In (c)3, substituted "Administrator" for "Superintendent" preceding "of A.D.T.C."
- The following annotations apply to N.J.A.C. 10A:9-4.7 subsequent to its recodification from N.J.A.C. 10A:9-4.8 by R.2009 d.237:*
- Amended by R.1990 d.195, effective April 2, 1990.
See: 21 N.J.R. 3050(a), 22 N.J.R. 1143(a).
- Exception to A.D.T.C. inmates added in (a).
- Amended by R.1997 d.122, effective March 17, 1997.
See: 29 N.J.R. 80(b), 29 N.J.R. 880(a).
- Revised (e) and added (f).
- Petition for Rulemaking.
See: 32 N.J.R. 608(c).
- Petition for Rulemaking.
See: 37 N.J.R. 362(a).
- Petition for Rulemaking.
See: 38 N.J.R. 344(c).
- Amended by R.2007 d.42, effective February 5, 2007.
See: 38 N.J.R. 4389(a), 39 N.J.R. 489(a).
- Section was "Not eligible to be considered for reduced custody status". In (c)1, added table entries for 2C:13-1, 2C:13-2, 2C:13-3, 2C:13-6, and 2C:34-1b.(3).
- Amended by R.2007 d.379, effective December 17, 2007.
See: 39 N.J.R. 2445(a), 39 N.J.R. 5340(b).
- In table entry "2C:5-1" in (c)1, substituted "24-4" for "23-4".
- Amended by R.2008 d.275, effective September 15, 2008.
See: 40 N.J.R. 3571(a), 40 N.J.R. 5240(a).
- In (a), inserted "and" preceding "Treatment"; in the introductory paragraph of (c), inserted a comma following "any other state" three times and "who" following "nonsexual offense and", and substituted "or" for "of" preceding the last occurrence of "the United States"; and in the table in (c)1, in entries "2C:13-1", "2C:13-2", and "2C:13-3", deleted "the victim is a minor, the offender is not a parent and" preceding "a sexual", substituted "imprisonment" for "Imprisonment" in entry "2C:13-3", deleted "of" preceding "child" in entry "2C:13-6", and added entry "2C:34-1b.(4)".
- Recodified from N.J.A.C. 10A:9-4.8 and amended by R.2009 d.237, effective August 3, 2009.
- See: 41 N.J.R. 1645(a), 41 N.J.R. 2925(a).
- Rewrote the section. Former N.J.A.C. 10A:9-4.7, Criteria for consideration for gang minimum custody status only, repealed.

Case Notes

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

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

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

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

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

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

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

1. The inmate is otherwise eligible according to the criteria set forth in this subchapter;

2. There is a psychiatric or psychological evaluation, not more than six months old, which focuses specifically on the inmate's criminal sexual behavior and his or her likelihood for success in reduced custody status; or

3. The inmate is housed at the Adult Diagnostic and Treatment Center (A.D.T.C.) and is approved for reduced custody status by the Institutional Classification Committee (I.C.C.) and Administrator of A.D.T.C., only for job assignment on A.D.T.C. property.

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

1. He or she is otherwise eligible according to the criteria set forth in this subchapter; and

2. There is a psychiatric or psychological evaluation, no more than six months old, which focuses specifically on the inmate's likelihood for success in gang minimum custody status in light of the present or past conviction for arson.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUBCHAPTER 5. COMMUTATION AND WORK TIME

10A:9-5.1 Authority

(a) Commutation credit is awarded to inmates pursuant to N.J.S.A. 30:4-140, which provides:

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

2. Commutation credits shall not be awarded until after the expiration of the mandatory minimum portion of the sentence. When the mandatory minimum portion 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).

Amended by R.2013 d.097, effective July 15, 2013.

See: 45 N.J.R. 719(a), 45 N.J.R. 1778(a).

In (a)2, substituted "shall not be" for "are not" and the second occurrence of "portion" for "part".

Case Notes

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

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

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

(a) Commutation or work credits shall not 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 shall not be applied to the mandatory minimum term, but shall only reduce the maximum term.

(c) Commutation credits, work credits, gap time, and minimum credits shall not be used to reduce a maximum sentence to a period of incarceration that is less than the judicial or statutory mandatory minimum term.

(d) Commutation credits shall not 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 shall not be applied in cases where an inmate does not work because of choice, unavailability of sufficient job assignments, medical lay-in (except for job related injuries), court remand, disciplinary lock-up, or similar incapacity. Inmates who refuse to perform assigned work shall receive disciplinary charges in accordance with N.J.A.C. 10A:4.

(f) Work credits shall not be awarded to administrative segregation inmates.

Amended by R.1989 d.299, effective June 5, 1989.

See: 21 N.J.R. 664(a), 21 N.J.R. 1516(c).

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

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

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

Revised text.

Amended by R.2001 d.155, effective May 21, 2001.

See: 33 N.J.R. 747(a), 33 N.J.R. 1589(b).

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

Petition for Rulemaking.

See: 36 N.J.R. 3597(c).

Amended by R.2013 d.097, effective July 15, 2013.

See: 45 N.J.R. 719(a), 45 N.J.R. 1778(a).

In (a) and (d), substituted "Commutation" for "No commutation" and inserted "not" following "shall"; in (b) and (c), inserted a comma following "time"; in (b), substituted "shall" for "may" twice; in (c), substituted "Commutation" for "In no case may commutation", and inserted "shall not"; and in (e), substituted "shall" for "may".

Amended by R.2014 d.027, effective February 3, 2014.

See: 45 N.J.R. 13(a), 46 N.J.R. 297(a).

In (f), substituted "administrative segregation" for "Administrative Segregation".

Case Notes

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

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

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

1. Forfeitures shall be determined by the Disciplinary Hearing Officer or Adjustment Committee pursuant to N.J.A.C. 10A:4. All decisions shall be reviewed by the Administrator or designee, who may approve or modify the amount of credits forfeited.

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

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

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

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

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

Revised section.

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

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

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

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

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

Petition for Rulemaking.

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

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

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

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

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

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

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

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

Revised section.

10A:9-5.5 Restoration of forfeited commutation credits

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

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

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

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

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

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

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

Example: An inmate commits a disciplinary infraction on January 1, 1985, and the sanction imposed includes a

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

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

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

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

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

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

Example: An inmate commits a disciplinary infraction on June 30, 1987. The sanction imposed includes a for-

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

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

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

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

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

(h) Any inmate housed at a residential community release agreement program must submit an application for restoration of commutation credits to the Administrator of the regional correctional facility with responsibility for the inmate. The classification officer of that correctional facility shall review the application. A review of the inmate's eligibility on restoration of credits by the classification officer shall be made in accordance with this subchapter and forwarded to the Administrator, who shall make the restoration determination.

(i) Any inmate serving a State prison sentence in an adult county correctional facility must submit an application for restoration of commutation credits to the Administrator of the Central Reception and Assignment Facility (CRAF). The classification officer of that facility shall review the application. A review of the inmate's eligibility on restoration of credits by the classification officer shall be made in accordance with this subchapter and forwarded to the Administrator, who shall make the restoration determination.

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

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

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

Revised (a).

Amended by R.1993 d.636, effective December 6, 1993.
See: 25 N.J.R. 4553(a), 25 N.J.R. 5476(a).

Amended by R.1996 d.557, effective December 2, 1996.
See: 28 N.J.R. 4155(a), 28 N.J.R. 5073(b).

Amended by R.1999 d.165, effective May 17, 1999.
See: 31 N.J.R. 708(b), 31 N.J.R. 1335(a).

Rewrote the section.

Amended by R.2001 d.222, effective July 2, 2001.
See: 33 N.J.R. 1043(a), 33 N.J.R. 2297(a).

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

Amended by R.2003 d.324, effective August 4, 2003.
See: 35 N.J.R. 1761(a), 35 N.J.R. 3558(b).

Rewrote (b).

Petition for Rulemaking.

See: 36 N.J.R. 4330(b).

Petition for Rulemaking.

See: 41 N.J.R. 2149(b).

Petition for Rulemaking.

See: 46 N.J.R. 562(c), 887(a).

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

(a) State-sentenced inmates eligible for work credit who are being housed in adult county correctional facilities shall be credited with one day work credit for every five days worked beginning on the 16th day after sentencing. All inmates confined in adult county correctional facilities are charged with the responsibility to keep their cells clean; such

assignments shall be considered as five day per week jobs. Work credits prior to sentencing must be certified by county authorities.

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

(c) Inmates eligible for work credit who are Intensive Supervision Program (I.S.P.) violators who are in adult county correctional facilities will receive work credits beginning on the 16th day after they have been in custody.

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

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

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

Amended by R.1987 d.332, effective August 17, 1987.
See: 19 N.J.R. 843(a), 19 N.J.R. 1560(b).

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

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

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

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

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

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

Revised text.

Amended by R.1999 d.340, effective October 4, 1999.

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

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

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

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

Inserted "adult" preceding "county correction facility" throughout.

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

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

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

Amended by R.2011 d.012, effective January 3, 2011.

See: 42 N.J.R. 2195(a), 43 N.J.R. 53(b).

In (a), substituted "State-sentenced inmates eligible for work credit" for "State sentenced inmates"; in (b) and (c), substituted "eligible for work credit who" for "that"; in (b), substituted "violators" for "violators"; and in (c), substituted "correctional" for "correction" and deleted a comma following "facilities".

10A:9-5.7 Reports of earned credits

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

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

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

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

10A:9-5.8 (Reserved)

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

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

SUBCHAPTER 6. INSTITUTIONAL CLASSIFICATION RECEPTION COMMITTEE (I.C.R.C.)

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

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

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

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

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

Administrative correction, effective January 27, 1989.

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

Institutional name change.

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

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

Revised (b).

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

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

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

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

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

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

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

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

Rewrote the section.

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

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

Section was "Responsibilities of the Inter-Institutional Classification Committee (I.I.C.C.)". In the introductory paragraph of (a), substituted

"I.C.R.C." for "I.I.C.C."; and in (a)1, deleted "male" preceding "inmates".

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

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

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

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

Administrative correction, effective January 27, 1989.

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

Institutional name change.

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

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

Revised (a).

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

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

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

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

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

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

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

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

Added (c).

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

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

Section was "Composition of the Inter-Institutional Classification Committee (I.I.C.C.)". In (a), substituted "I.C.R.C." for "I.I.C.C."; rewrote (b); and in (c), deleted "classification officer and a" preceding "representative" and substituted "a member of the I.C.R.C." for "members of the I.I.C.C."

10A:9-6.3 Criteria for assignment of inmates

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

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

Administrative correction, effective January 27, 1989.
See: 21 N.J.R. 558(a).
Institutional name change.
Amended by R.1992 d.79, effective February 18, 1992.
See: 23 N.J.R. 3721(a), 24 N.J.R. 612(a).
Revised text.

Amended by R.1997 d.122, effective March 17, 1997.
See: 29 N.J.R. 80(b), 29 N.J.R. 880(a).
Inserted (a)6 through (a)8; and deleted (b) through (k), providing
criteria for assignment to specified correctional facilities.
Amended by R.2002 d.190, effective June 17, 2002.
See: 34 N.J.R. 1082(a), 34 N.J.R. 2030(a).
In (a), rewrote the introductory paragraph.

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

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

In the introductory paragraph of (a), substituted "I.C.R.C." for "I.I.C.C."; in (a)4, inserted "criminal and/or correctional facility"; in (a)7, deleted "and" from the end; in (a)8, substituted a semicolon for the period at the end; and added (a)9 and (a)10.

10A:9-6.4 (Reserved)

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

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

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

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

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

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

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

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

Section was "Transfers".

10A:9-6.5 (Reserved)

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

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

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

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

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

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

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

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

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

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

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

Section was "Emergency transfers".

SUBCHAPTER 7. INTER-INSTITUTIONAL TRANSFER

10A:9-7.1 Procedure for initiating transfer requests

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

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

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

(d) Requests for transfer received from attorneys or other third parties on behalf of an inmate shall not be considered. All third-party individuals making such requests shall be advised that the inmate must initiate the request. However, third parties may submit written comments to the appropriate

I.C.C. in conjunction with an inmate request, all of which shall be considered by the I.C.C. when they review the inmate's request.

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

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

In (b), changed officials who may initiate requests for transfer.

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

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

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

Recodified from N.J.A.C. 10A:9-7.3 and amended by R.2007 d.379, effective December 17, 2007.

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

In (a), substituted "correctional facility" for "Complex"; and in (d), substituted "third-party" for "third party", deleted "shall be advised that they" preceding "may submit" and "and the Special (S.C.C.)" preceding "when".

Former N.J.A.C. 10A:9-7.1, Responsibilities of the Special Classification Committee (S.C.C.), repealed.

10A:9-7.2 Procedure for reviewing nonemergency transfer funds

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

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

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

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

(e) If the I.C.C. recommends approval of the transfer request, the Administrator at the correctional facility where the inmate is housed shall submit the recommendation to the Administrator of the potential receiving facility with a full set of classification materials and any other information upon which the recommendation was made.

(f) The Administrator of the potential receiving correctional facility shall consider all information submitted and shall determine whether the requested transfer shall be approved.

(g) The Administrator of the potential receiving correctional facility shall send written notification of the decision and the reasons therefor to:

1. The Administrator of the sending facility;
2. The authorized person who made the request; and
3. The I.C.C. of the sending facility.

(h) The Administrator or designee of the sending facility shall give notice of the final decision to the inmate.

(i) If the transfer request is approved by the Administrator of the receiving facility, the Administrator at the correctional facility where the inmate is housed shall forward the Form CRAF-003 Agreement of Transfer to the correctional facility intake coordinator who shall make the necessary arrangements to effectuate the transfer.

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.

Recodified from N.J.A.C. 10A:9-7.4 and amended by R.2007 d.379, effective December 17, 2007.

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

Rewrote (e); rewrote the introductory paragraph of (f); deleted (f)1 and (f)2; in the introductory paragraph of (g), substituted "Administrator of the potential receiving correctional facility" for "S.C.C." and deleted "S.C.C." preceding "decision"; in (g)1 and (g)3, inserted "of the sending facility"; in (h), substituted "Administrator or designee of the sending facility" for "I.C.C." and deleted "written" preceding "notice"; and added (i).

Former N.J.A.C. 10A:9-7.2, Composition of the Special Classification Committee (S.C.C.), repealed.

10A:9-7.3 Procedure for reviewing emergency transfer requests

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

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

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

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

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

(e) When the Assistant Commissioner, or the Director confirms the transfer, a copy of Form 852-I Authorization for Emergency Transfer shall be forwarded to the following:

1. The Administrator of the sending correctional facility;
2. The Administrator of the receiving correctional facility; and
3. The I.C.C.

(f) When the Administrator of sending correctional facility confirms or fails to confirm the transfer, the Administrator or designee shall notify the inmate.

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

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

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

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

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

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

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

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

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

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

Recodified from N.J.A.C. 10A:9-7.5 and amended by R.2007 d.379, effective December 17, 2007.

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

Rewrote (c), (e) and (f); and deleted (h).

Former N.J.A.C. 10A:9-7.3, Procedure for initiating transfer requests, recodified to N.J.A.C. 10A:9-7.1.

10A:9-7.4 Criteria for reviewing transfer requests

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

1. Disciplinary reports;
2. Correctional facility adjustment;
3. Progress in programs;
4. Nature and circumstances of present offense(s);
5. Records from previous confinement(s);
6. Current psychological and psychiatric reports;
7. History of escape, attempted escape or propensity for escape;
8. Educational needs and history;
9. Prior offense record;
10. Substance dependency or involvement;
11. Age;

12. Medical condition; and

13. Other professional and/or administrative reports.

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

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

In (a), substituted "facilities" for "facility" and "another" for "other" in the introductory paragraph, substituted "Substance" for "Drug" in 10. Recodified from N.J.A.C. 10A:9-7.6 and amended by R.2007 d.379, effective December 17, 2007.

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

Rewrote the introductory paragraph of (a); in (a)11, deleted "and" from the end; in (a)12, inserted "; and" at the end; and added (a)13. Former N.J.A.C. 10A:9-7.4, Procedure for reviewing nonemergency transfer funds, recodified to N.J.A.C. 10A:9-7.2.

10A:9-7.5 Procedures for transfers

Upon approval of a requested transfer by the Administrator, Assistant Commissioner or Director or, the sending correctional facility shall arrange and then coordinate the date and time of the transfer of the inmate, along with his or her records and property, with the receiving correctional facility.

Recodified from N.J.A.C. 10A:9-7.7 and amended by R.2007 d.379, effective December 17, 2007.

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

Rewrote the section. Former N.J.A.C. 10A:9-7.5, Procedure for reviewing emergency transfer requests, recodified to N.J.A.C. 10A:9-7.3.

10A:9-7.6 (Reserved)

Recodified to N.J.A.C. 10A:9-7.4 by R.2007 d.379, effective December 17, 2007.

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

Section was "Criteria for reviewing transfer requests".

10A:9-7.7 (Reserved)

Recodified to N.J.A.C. 10A:9-7.5 by R.2007 d.379, effective December 17, 2007.

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

Section was "Procedures for transfers".

SUBCHAPTER 8. SPECIAL CLASSIFICATION REVIEW BOARD (S.C.R.B.)

10A:9-8.1 Responsibilities

Inmates committed to the Adult Diagnostic and Treatment Center (A.D.T.C.) shall be eligible for parole consideration only upon recommendation by the S.C.R.B. pursuant to N.J.S.A. 2C:47-5 except that in no case shall an inmate committed to the A.D.T.C. become eligible for parole prior to the expiration of any mandatory minimum term imposed.

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

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

Rewrote the section.

10A:9-8.2 Composition of the Special Classification Review Board (S.C.R.B.)

(a) The Commissioner shall appoint at least four members to serve on the S.C.R.B., two of whom may be Department of

Corrections employees. An alternate member may be designated by the Commissioner to serve in the absence of a full-time S.C.R.B. member. The S.C.R.B. panels, which conduct in-person interviews, shall be composed of no fewer than two S.C.R.B. members.

(b) Each S.C.R.B. panel shall be composed of the following:

1. A representative from an administrative unit within the Department of Corrections; and

2. Up to three persons from outside of the Department of Corrections, one of whom must have a master's degree in psychology and one of whom must have a professional background, such as a master's degree in any field.

(c) Terms of membership shall be three years.

(d) Members shall elect a Chairperson and Vice Chairperson annually at the S.C.R.B.'s July meeting. These offices shall be rotated among members, when practicable.

(e) The S.C.R.B. shall meet at the Adult Diagnostic and Treatment Center (A.D.T.C.) once per month or more often as deemed necessary, on a day and at a time agreed on by S.C.R.B. members. Special meetings may be held when called by the Chairperson or Vice Chairperson. A majority of S.C.R.B. members must be present to conduct official business.

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 (a); recodified portion of (a) as (b) and substantially amended; and recodified former (b) through (d) as (c) through (e).

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

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

In (a), deleted "Special Classification Review Board" preceding "S.C.R.B.", substituted "fewer" for "less" preceding "than two" and deleted "and no more than four S.C.R.B. members" following "two S.C.R.B. members".

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

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

In (a), substituted "six" for "eight"; in (c), substituted "four" for "two".

Amended by R.2013 d.088, effective June 17, 2013.

See: 44 N.J.R. 434(a), 45 N.J.R. 1563(b).

In (a), substituted "four" for "six", and inserted the second sentence; and in (c), deleted "and shall be staggered so that no more than four members are replaced or reappointed in any one year" following "years".

10A:9-8.3 Coordinator for the Special Classification Review Board (S.C.R.B.)

(a) A staff member of the Adult Diagnostic and Treatment Center (A.D.T.C.) shall be designated by the Administrator to serve as Coordinator for the S.C.R.B.

(b) The Coordinator shall be responsible for the following duties:

1. Maintaining S.C.R.B. statistics and records;
2. Maintaining minutes of S.C.R.B. meetings;

3. Informing S.C.R.B. members and maintaining a file of all court decisions regarding the New Jersey Sex Offender Program;

4. Providing notice to each inmate scheduled for in-person review by the S.C.R.B. at least three business days in advance of the scheduled review date;

5. Providing each S.C.R.B. member with copies of written materials for review prior to each scheduled review date;

6. Notifying the Commissioner at least six months prior to the termination of a S.C.R.B. member's term to provide adequate time to review prospective applicants for possible appointment;

7. Tracking the transfer of an inmate sentenced to the A.D.T.C. or to another facility in accordance with N.J.S.A. 2C:47-3, 4.1 and/or 4.2; and

8. Providing other services as requested by the Administrator or S.C.R.B. members.

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

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

Substituted "Administrator" for "Superintendent" throughout; in (a), deleted "Special Classification Review Board" preceding "S.C.R.B."; in (b), substituted "business" for "working" following "three" in 4 and "review" for "hearing" following "scheduled" in 4 and 5.

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

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

In (b)6, deleted "and" from the end; added new (b)7; and recodified former (b)7 as (b)8.

10A:9-8.4 Reviews of inmates housed at the Adult Diagnostic and Treatment Center (A.D.T.C.)

(a) The Administrator or designee of the A.D.T.C. shall ensure a report is submitted in writing at least twice per year to the Special Classification Review Board (S.C.R.B.) concerning the physical and psychological condition of each inmate eligible for parole consideration.

(b) The Administrator or designee shall ensure the report includes a recommendation as to whether the inmate should continue to be confined or should be considered for release on parole.

(c) An inmate with a judicially imposed period of parole ineligibility shall not appear before the S.C.R.B. until the inmate's period of parole ineligibility has been served, except for inmates who have made exceptional progress as determined by the mental health staff.

(d) An inmate shall receive an in-person interview with the S.C.R.B. upon completion of one-fourth of the inmate's sentence without regard to applicable credits, unless the inmate has a judicially imposed period of parole ineligibility with the exception of those inmates who have made exceptional progress as determined by the mental health staff.

(e) The Administrator shall recommend whether an inmate other than those in (c) and (d) above shall have an in-person or non in-person review by the S.C.R.B.

(f) During in-person reviews, the inmate appearing before the S.C.R.B. shall be afforded the opportunity to present any matter which he or she believes is related to his or her possible parole. S.C.R.B. members may question the inmate regarding:

1. Criminal conduct;
2. Record of adjustment to incarceration;
3. Progress in therapy; or
4. Any matter which the S.C.R.B. members think is relevant.

(g) During non in-person reviews, the inmate does not appear before the S.C.R.B. The S.C.R.B. shall review all documents provided pursuant to (i) below.

(h) The following shall apply to all reviews:

1. The Board shall not be bound by judicial rules of evidence;
2. Attorneys shall not be permitted to appear before the S.C.R.B. at meetings;
3. Letters from attorneys, relatives or other interested persons shall be considered and, if relevant, may be made part of the record;
4. Other observers may be permitted by the Chairperson to attend, with the approval of the Administrator.

(i) In preparation for each in-person review, the Coordinator shall provide the S.C.R.B. members with copies of the following:

1. Report of the primary therapist, which shall include a summary of the inmate's overall adjustment and progress in therapy;
2. Staff recommendations;
3. Chronological semiannual reviews;
4. Outpatient report;
5. Presentence report; and
6. Progress notes.

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 (c) and (d); recodified former (c) through (g) as (e) through (i); in (e), substituted "recommend whether an inmate other than those in (c) and (d) above" for "also recommend whether the inmate" and deleted provision that generally only inmates recommended for parole receive an in-person review; in (i), substituted reference to in-person review for reference to review; inserted (i)6; and deleted former (h), relating to materials to be provided for in-person reviews.

Administrative correction.

See: 31 N.J.R. 4268(b).

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

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

Substituted "Administrator" for "Superintendent" throughout; in (a), deleted "Adult Diagnostic and Treatment Center" preceding "A.D.T.C."; in (h), deleted 4 and recodified former 5 as 4 and inserted "by the Chairperson" following "permitted" in new 4; in (i)1, substituted "in" for "of" preceding "therapy".

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

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

In (a), inserted "or designee", "ensure a", and "is submitted"; and in (b), inserted "or designee" and substituted "ensure the report includes" for "include in each report".

10A:9-8.5 Review of inmates housed at other correctional facilities

(a) All inmates sentenced under N.J.S.A. 2A:164-1 et seq. who are not housed at the Adult Diagnostic and Treatment Center (A.D.T.C.) shall be subject to review by the Special Classification Review Board (S.C.R.B.).

1. The Administrator of a correctional facility other than the A.D.T.C. where an inmate sentenced under N.J.S.A. 2A:164-1 et seq. is housed shall forward in writing the required semiannual reports (see N.J.A.C. 10A:9-8.4) to the Administrator of the A.D.T.C. The report shall contain a recommendation as to the inmate's continued confinement or consideration for release on parole.

2. If the inmate is recommended for consideration for parole, the inmate shall be transported to the A.D.T.C. for the day to appear before the A.D.T.C. treatment staff. If the A.D.T.C. treatment staff concurs with the recommendation, the inmate shall remain at the A.D.T.C. for an in-person review before the S.C.R.B.

3. If the inmate is not recommended for parole, the S.C.R.B. shall conduct a non in-person review.

(b) Inmates sentenced under N.J.S.A. 2A:164 who are transferred permanently from the A.D.T.C. are subject to resentencing under N.J.S.A. 2C:47. These inmates are no longer subject to S.C.R.B. review.

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), amended the N.J.S.A. reference and substituted "Administrator" for "Superintendent" throughout, deleted "Adult Diagnostic Treatment Center" preceding "A.D.T.C." and "(Form SCR 2A)" following "writing" in 1 and deleted "Special Classification Review Board" preceding "S.C.R.B." in 2.

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

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

In the introductory paragraph of (a), substituted "not housed at" for "transferred from" and deleted "to other correctional facilities for disciplinary or other reasons required temporary relocation outside of the A.D.T.C." following "(A.D.T.C.)".

10A:9-8.6 Decisions of the Special Classification Review Board (S.C.R.B.); in-person review

(a) After each in-person review, a vote shall be taken to determine whether the S.C.R.B. will recommend parole. A tie vote shall be deemed a rejection.

(b) An inmate who has been denied a recommendation of parole shall be rescheduled for an in-person S.C.R.B. review

at the discretion of the S.C.R.B., except as permitted by (c) below. In no event shall the inmate be rescheduled for another in-person S.C.R.B. review later than 36 months from the date of the decision of the S.C.R.B. to deny recommendation of parole.

(c) The S.C.R.B. may defer its decision in appropriate cases, or in those cases where additional information is required. Such cases may be presented for in-person review in three months.

(d) Each S.C.R.B. member in attendance at the review shall sign written documentation indicating the date of the review and the decision of the S.C.R.B.

(e) Within 10 business days after each in-person review the S.C.R.B. shall provide the inmate with a copy of its written decision and, if an inmate is denied a recommendation to the State Parole Board, a copy of the summary of reason(s) for denial shall be provided to the inmate. The written decision shall be signed by the S.C.R.B. Chairperson or designee.

(f) The S.C.R.B. shall summarize in its written decision the reasons for its conclusion. The reasons are within the sole discretion of the S.C.R.B., and may include therapeutic issues deemed to require additional work.

(g) The Coordinator shall prepare a summary of each inmate's presentation to the S.C.R.B. The summary shall be reviewed and signed by the Chairperson and placed in the inmate's classification and S.C.R.B. folders.

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 (b); and in (e), inserted text "and, if an inmate is denied ... provided to the inmate".

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

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

In (a), deleted "Special Classification Review Board" preceding "S.C.R.B."; in (c), substituted "required" for "requested" in the first sentence; rewrote (d) and (e).

10A:9-8.7 Decisions of the S.C.R.B.; non in-person review

(a) Each S.C.R.B. member in attendance at the review shall sign written documentation indicating the date of the review and the decision of the S.C.R.B.

(b) Within 10 business days after each non in-person review, the S.C.R.B. shall provide the inmate with a copy of its written decision. The written decision shall be signed by the Chairperson or designee.

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

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

Rewrote the section.

10A:9-8.8 Appeal of the Special Classification Review Board (S.C.R.B.) denial

(a) Any inmate denied a referral to the State Parole Board by the S.C.R.B. on two consecutive occasions shall have the right to appeal to the S.C.R.B. Chairperson within 30 business days of the S.C.R.B.'s second denial, after the inmate consults with his or her primary therapist to review any therapeutic issues.

(b) If, upon review of the inmate's appeal, the S.C.R.B. Chairperson finds sufficient reasons exist, the Chairperson may order a full S.C.R.B. in-person review for the inmate.

(c) The S.C.R.B. Chairperson shall have the authority to deny an inmate's appeal.

(d) After reviewing the inmate's appeal, the S.C.R.B. Chairperson shall notify the inmate in writing as to the Chairperson's decision.

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

Former section recodified to N.J.A.C. 10A:9-8.9.
Amended by R.2002 d.190, effective June 17, 2002.
See: 34 N.J.R. 1082(a), 34 N.J.R. 2030(a).
Rewrote the section.

10A:9-8.9 Referrals to the State Parole Board

(a) The Coordinator shall notify the State Parole Board of those inmates whom the Special Classification Review Board (S.C.R.B.) has recommended for parole, and forward the necessary documents to the State Parole Board for its use in reaching a decision as to parole.

(b) No inmate shall be referred to the State Parole Board for reconsideration within a period of less than three months following his denial of parole by the State Parole Board, except under unusual circumstances.

Recodified from 10A:9-8.8 by R.1997 d.122, effective March 17, 1997.
See: 29 N.J.R. 80(b), 29 N.J.R. 880(a).

Former section recodified to N.J.A.C. 10A:9-8.10.

10A:9-8.10 Parole records

(a) For all parolees who were sentenced under N.J.S.A. 2C:47 and 2A:164, the Coordinator shall receive copies of the following:

1. Parole Certificates;
2. Supervisory reports;
3. Special reports;
4. Arrest reports;
5. Termination Certificates; and
6. Notices of discharge of inmates from parole.

(b) The Coordinator shall advise the S.C.R.B. of those cases in which probable cause to revoke parole has been established.

(c) The Coordinator shall also notify the S.C.R.B. when a parolee is returned as a violator or as a new commitment.

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).
Recodified from 10A:9-8.9 by R.1997 d.122, effective March 17, 1997.
See: 29 N.J.R. 80(b), 29 N.J.R. 880(a).

Former section recodified to N.J.A.C. 10A:9-8.11.
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), deleted "Special Classification Review Board" preceding "S.C.R.B."; in (c), substituted "S.C.R.B." for "Board".

10A:9-8.11 Notice of release

A copy of the notice of release at the expiration of maximum sentence shall be forwarded by the housing correctional facility to the Coordinator, who shall so advise the S.C.R.B. members.

Recodified from 10A:9-8.10 by R.1997 d.122, effective March 17, 1997.
See: 29 N.J.R. 80(b), 29 N.J.R. 880(a).

Former section recodified to N.J.A.C. 10A:9-8.12.
Amended by R.2002 d.190, effective June 17, 2002.
See: 34 N.J.R. 1082(a), 34 N.J.R. 2030(a).

Deleted "Special Classification Review Board" preceding "S.C.R.B."

10A:9-8.12 Confidentiality

(a) The S.C.R.B. members shall not discuss or give information to any unauthorized person regarding specific inmates reviewed.

(b) Confidentiality of inmate/parolee records shall be governed by N.J.A.C. 10A:22.

Recodified from 10A:9-8.11 by R.1997 d.122, effective March 17, 1997.
See: 29 N.J.R. 80(b), 29 N.J.R. 880(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), deleted "Special Classification Review Board" preceding "S.C.R.B."

SUBCHAPTER 9. COMMUNITY CORRECTIONS CLASSIFICATION COMMITTEE (C-4)

10A:9-9.1 Responsibility of the Community Corrections Classification Committee (C-4)

The C-4 shall be responsible for the assignment to a correctional facility or a residential community program and to make a recommendation of custody status when an inmate has been returned from a residential community program or Electronic Monitoring Program (EMP).

10A:9-9.2 Composition of the C-4

(a) The members of the C-4 shall be:

1. An Administrator or designee of a correctional reception center;
2. A Classification Department representative;
3. A Division of Operations representative;
4. Two Division of Community Programs representatives; and
5. A Division of Drug Programs representative.

10A:9-9.3 C-4 decision making criteria

(a) Decisions regarding the assignment to a correctional facility or a residential community program and the recommendation of a custody status when an inmate has been returned from a residential community program or Electronic Monitoring Program (EMP) shall be based upon:

1. The length of the sentence;
2. The type of the sentence;
3. The age of the inmate;
4. The previous criminal and/or correctional facility history of the inmate;
5. A review of the pre-sentence investigation report;
6. The objective classification score;
7. The security level that corresponds with the custody status score of the inmate;
8. The housing security level designation assigned to each correctional facility;
9. Current psychological, psychiatric and/or assessment center evaluations;
10. Disciplinary reports;
11. Other professional and/or administrative reports; and
12. Eligibility for a residential community program.

SUBCHAPTER 10. RESIDENTIAL COMMUNITY PROGRAM NOTIFICATION COMMITTEE

10A:9-10.1 Responsibilities of the Residential Community Program Notification Committee

(a) The Residential Community Program Notification Committee shall be responsible for:

1. Providing notice to the prosecutor of the county in which the inmate was convicted or the Attorney General, if the matter was prosecuted by the Attorney General in accordance with N.J.S.A. 30:4-91.8;
2. Ensuring the notice includes the inmate's name, number, identifying factors, and offense history;

3. Reviewing comments from victims, nearest relatives of victims if the offense resulted in death, the county prosecutor, and the Attorney General concerning the participation of an inmate in a community-based program in order to give all due consideration to the information contained in those comments when considering the participation of that inmate;

4. Ensuring that all comments submitted are deemed confidential and shall not be disclosed to anyone who is not authorized to receive or review them; and

5. Determining inmate suitability for placement in a residential community program.

10A:9-10.2 Composition of the Residential Community Program Notification Committee

(a) The Residential Community Program Notification Committee shall be chaired by a representative of the Division of Programs and Community Services. The Chairperson shall be responsible for casting the deciding vote when a tie in the voting occurs.

(b) The following units shall provide a representative to be a voting member of the Committee:

1. The Office of Community Programs;
2. The Division of Operations;
3. The Office of Internal Support and Outreach Services;
4. The Office of Drug Programs; and
5. The Office of Transitional Services.

(c) A representative from the Office of Victims Services shall serve as a non-voting member of the Committee.

10A:9-10.3 Residential Community Program Notification Committee decision making criteria for placement in a Residential Community Program

(a) The determination to approve/disapprove the placement of an inmate identified in N.J.S.A. 30:4-91.8 to a residential community program shall be based upon the following criteria:

1. Comments, information, arguments or views provided to the Department of Corrections from the victim, the relatives of the victim, county prosecutor, and the Office of the Attorney General;
2. The length of the sentence;
3. The present offense;
4. The age of the offender;
5. The previous criminal and/or correctional facility history of the inmate;

- 6. A review of the pre-sentence investigation report;
- 7. Assessments;
- 8. Participation in relevant programming;
- 9. Current psychological, psychiatric and/or assessment center evaluations;

10. Disciplinary reports; and

11. Other professional and/or administrative reports.

Petition for Rulemaking.
See: 46 N.J.R. 715(b), 886(d).