

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

Chapter 9, Classification Process, expires on November 14, 2012.

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Classification Committee (J.I.C.C.); and Subchapter 11, Juvenile Female Classification Committee (J.F.C.C.), were repealed.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.

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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.

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 Infraction Scale has the following levels:

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

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

1. *.001 killing;
2. *.003 assaulting any person with a weapon;

3. *.007 hostage taking;
4. *.012 throwing bodily fluid at any person or otherwise purposely subjecting such person to contact with a bodily fluid;
5. *.050 sexual assault;
6. *.101 escape;
7. *.102 attempting or planning escape;
8. *.151 setting a fire;
9. *.201 possession or introduction of an explosive, incendiary device or any ammunition;
10. *.215 possession with intent to distribute or sell prohibited substances such as drugs, intoxicants or related paraphernalia;
11. *.216 distribution or sale of prohibited substances such as drugs, intoxicants or related paraphernalia;
12. *.251 rioting;
13. *.252 encouraging others to riot; or
14. *.202 possession or introduction of a gun, firearm, weapon, sharpened instrument, knife or unauthorized tool.

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

1. *.002 assaulting any person;
2. *.005 threatening another with bodily harm or with any offense against his or her person or his or her property;
3. *.006 extortion, blackmail, protection: demanding or receiving favors, money or anything of value in return for protection against others, to avoid bodily harm, or under threat of informing;
4. *.009 misuse, 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 Reclassification Instrument.
1. *.004 fighting with another person;
 2. *.011 possession or exhibition of anything related to a security threat group;
 3. .013 unauthorized physical contact with any person, such as, but not limited to, physical contact not initiated by a staff member, volunteer or visitor;
 4. .051 engaging in sexual acts with others;
 5. .052 making sexual proposals or threats to another;
 6. *.054 refusal to register as a sex offender;
 7. .103 wearing a disguise or mask;
 8. *.150 tampering with fire alarms, fire equipment or fire suppressant equipment;
 9. .152 destroying, altering, or damaging government property, or the property of another person;
 10. *.153 stealing (theft);
 11. .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;
 12. *.205 misuse of authorized medication;
 13. .206 possession of money or currency (\$50.00 or less) unless specifically authorized;
 14. *.207 possession of money or currency (in excess of \$50.00) unless specifically authorized;
 15. .208 possession of property belonging to another person;
 16. .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;
 17. .211 possessing any staff member's clothing and/or equipment;
 18. .254 refusing to work, or to accept a program or housing unit assignment;
 19. .256 refusing to obey an order of any staff member;
 20. .257 violating a condition of any community release program;
 21. *.260 refusing to submit to mandatory medical or other testing such as, but not limited to, mandatory testing required by law or court order;
 22. .301 unexcused absence from work or any assignment; being late for work;
 23. .304 using abusive or obscene language to a staff member;
 24. .305 lying, providing a false statement to a staff member;
 25. .351 counterfeiting, forging, or unauthorized reproduction or use of any document not enumerated in prohibited act *.352;
 26. *.360 unlawfully obtaining or seeking to obtain personal information pertaining to an inmate's victim or the victim's family;
 27. .401 participating in an unauthorized meeting or gathering;

28. .402 being in an unauthorized area;
29. .451 failure to follow safety or sanitation regulations;
30. .452 using any equipment or machinery which is not specifically authorized;
31. .453 using any equipment or machinery contrary to instructions or posted safety standards;
32. .501 failure to stand count;
33. .502 interfering with the taking of count;
34. .552A being intoxicated while the inmate is assigned to a Residential Community Program;
35. .601 gambling;
36. .602 preparing or conducting a gambling pool;
37. .603 possession of gambling paraphernalia;
38. .701 unauthorized use of mail or telephone;
39. .702 unauthorized contacts with the public;
40. .703 correspondence or conduct with a visitor in violation of regulations;
41. .705 commencing or operating a business or group for profit or commencing or operating a non-profit enterprise without the approval of the Administrator;
42. .706 soliciting funds and/or noncash contributions from donors within or without the correctional facility except where permitted by the Administrator;
43. .707 failure to keep a scheduled appointment with medical, dental or other professional staff;
44. .709 failure to comply with a written rule or regulation of the correctional facility;
45. .753 purchasing anything on credit; or
46. .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”.

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 detainer or open charge pursuant to N.J.A.C. 10A:9-4.6;
3. Code C: Permanent custody prohibition/bar. Medium custody status assignment or above only due to escape history pursuant to N.J.A.C. 10A:9-4.8;
4. Code D: Medium custody status assignment or above due to escape history pursuant to N.J.A.C. 10A:9-4.6(s);
5. Code E-1: Permanent custody prohibition/bar. Medium custody status assignment or above only due to sexual or arson offense convictions pursuant to N.J.A.C. 10A:9-4.8;
6. Code E-2: Permanent custody prohibition/bar. Gang minimum custody status assignment or above only due to sexual or arson offense convictions pursuant to N.J.A.C. 10A:9-4.7;
7. Code F: Medium custody status assignment 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.

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).

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

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

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

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

1. Distribution/manufacture of CDS offense of the 1st or 2nd degree;
2. Offense of an assaultive nature;
3. Burglary of the 2nd degree;
4. Weapons offense;
5. Robbery; and/or
6. Terroristic threat offense.

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

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

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

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

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

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

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

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

(v) Foreign born inmates, excluding U.S. territories and possessions, shall be eligible to be considered for reduced custody status provided the 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:9-4.8(e), 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 1.

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).

(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.

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."

10A:9-4.7 Criteria for consideration for gang minimum custody status only

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

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

(c) An inmate who is presently serving a sentence for one count of a sexual offense and has no prior adult convictions for sexual offenses, or an inmate who is presently serving a sentence for a nonsexual offense but who has a prior adult conviction for one count of a sexual offense may be considered for gang minimum custody status provided:

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

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

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

10A:9-4.8 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:9-4.7(c)3.

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

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

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

2C: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:5-1	Criminal attempt to commit any offense under 2C:14-2, 14-3, 24-4;
2C:5-2	Conspiracy to commit an offense under 2C:14-3, 24-4;
2C:47-1	Et seq. any conviction obtained under this section;
2A:86-3	Abduction of female under age 18 for purpose of marriage or carnal abuse;
2A:90-2	Assault with intent to commit rape or sodomy, or to carnally abuse a female under the age of 16, with or without her consent;
2A:96-3	Debauching or impairing the morals of a child under the age of 16;
2A:138-1	Rape or carnal abuse;
2A:138-2	Carnal knowledge of female inmates of a home or institution for the feeble minded or mentally ill;
2A:143-1	Sodomy;
2A:143-2	Sodomy with children under 16;
2A:85-5	Attempt to commit any of the foregoing offenses;
2A:85-14	Aiding and abetting the commission of any of the foregoing offenses;
2A:98-1	Conspiracy to commit any of the foregoing offenses; and/or
2A:164-3	Any conviction obtained under this section, except lewdness.

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

(e) An inmate who has two instances of escape or attempted escape or a combination of either through convictions or prohibited acts is not eligible to be considered for any type of reduced custody.

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

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

Exception to A.D.T.C. inmates added in (a).
Amended by R.1997 d.122, effective March 17, 1997.
See: 29 N.J.R. 80(b), 29 N.J.R. 880(a).

Revised (e) and added (f).
Petition for Rulemaking.
See: 32 N.J.R. 608(c).
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)".

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:9-4.9 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 are not awarded until after the expiration of the mandatory minimum portion of the sentence. When the mandatory minimum part of the sentence has been served, commutation credits are awarded on the full sentence.

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

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

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

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

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

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

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

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

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

Revised (a).

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

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

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

Petition for Rulemaking.

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

Case Notes

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) No commutation or work credits shall be given to any inmate sentenced for sex offenses under the provisions of N.J.S.A. 2A:164. However, those inmates who have been