

(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.

4. Review of inmate requests for transfer to other facilities;

5. Making changes in the housing or program assignments of inmates;

6. Review and approval or disapproval of inmates for participation in community release programs;

7. Review of the imposition of the Administrative Segregation sanction;

8. Review of Restrictive Activities Program assignments at the Adult Diagnostic and Treatment Center (A.D.T.C.);

9. Review of referrals from the Disciplinary Hearing Officers; and

10. Review and approval or disapproval of applications for the Electronic Monitoring/Home Confinement Program.

(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;

(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

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.

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 Segregation Unit (see N.J.A.C. 10A:5-3).

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

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

Former N.J.A.C. 10A:9-3.14, Written procedures, recodified to N.J.A.C. 10A:9-3.15.

10A:9-3.15 Written procedures

(a) Each correctional facility shall develop written classification procedures that are in accordance with this subchapter.

(b) These written procedures shall be reviewed and updated annually and submitted to the Bureau of Correctional Information and Classification Services, Office of Policy and Planning, for review and approval.

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

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

In (b), inserted reference to the Office of Policy and Planning.

Recodified from N.J.A.C. 10A:9-3.14 by R.2001 d.425, effective November 19, 2001.

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".

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