

3. Age;
4. Family status;
5. Social contacts with family and friends;
6. Correctional facility adjustment;
7. Educational history and needs;
8. Vocational history and needs;
9. Military history;
10. Nature and circumstance of present offense;
11. Prior offense record;
12. Records from previous confinement;
13. Detainers on file or pending;
14. Drug dependency and/or involvement;
15. Sexual adjustment;
16. History of escape, attempted escape or propensity for escape;
17. Current psychological and/or psychiatric reports;
18. Medical history and recommendations;
19. Arson history;
20. Needs of the correctional facility; and/or
21. Any other factor pertinent to the inmate's case.

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

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

Stylistic revisions in (a).

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

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

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

10A:9-3.4 Initial classification

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

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

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

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

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

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

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

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

Revised (a).

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

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

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

Case Notes

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

10A:9-3.5 Review dates

(a) An inmate shall be scheduled for a review date at his or her initial classification that is no more than 12 months from the date of initial classification.

(b) The frequency of case review shall be dependent on the review date determined by the Institutional Classification Committee (I.C.C.) or a change in the inmate's status. Factors that may be considered include:

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

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

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

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

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

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

10A:9-3.6 Special reviews

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

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

10A:9-3.7 Discussions

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

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

10A:9-3.8 Work assignments

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

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

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

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

10A:9-3.9 Educational assignments

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

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

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

10A:9-3.10 Counseling assignments

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

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

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

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

10A:9-3.11 Reassignments

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

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

10A:9-3.12 Community release programs

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

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

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

10A:9-3.13 Transfers

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

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 Superintendent or Institutional Classification Committee (I.C.C.) deems relevant to the inmate's successful placement at a satellite unit.

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

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

New Rule, R.1990 d.195, effective April 2, 1990.
See: 21 N.J.R. 3050(a), 22 N.J.R. 1143(a).
Amended by R.1997 d.122, effective March 17, 1997.
See: 29 N.J.R. 80(b), 29 N.J.R. 880(a).

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

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).

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 department, 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.

Case Notes

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

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

(a) No commutation or work credits shall be given to any inmate sentenced for sex offenses under the provisions of N.J.S.A. 2A:164. However, those inmates who have been sentenced or resentenced under N.J.S.A. 2C are eligible to receive commutation and work credits from the effective date of that law, September 1, 1979.

(b) In all cases where the sentence includes a mandatory minimum term of imprisonment, commutation credits, work credits, gap time and minimum credits may not be applied to the mandatory minimum term, but may only reduce the maximum term.

(c) In no case may commutation credits, work credits, gap time and minimum credits be used to reduce a maximum sentence to a period of incarceration that is less than the judicial or statutory mandatory minimum term.

(d) No commutation credits shall be given for any time served in custody between arrest and imposition of sentence. Work credits may be given for work performed in the county jail prior to sentencing if the work time is verified in writing by the County Jail Superintendent.

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

(f) Work credits may be awarded to Administrative Segregation inmates pursuant to N.J.A.C. 10A:5-3.19, Work opportunities.

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.

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 commutation credits forfeited.

2. In no case shall more than 365 days of commutation credits be declared forfeited for any single disciplinary offense.

(b) Pursuant to N.J.S.A. 30:4-140, commutation credits shall be declared to be forfeited when any civil action or proceeding, filed by an inmate, 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.

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) 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.

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

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

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

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

Example: An inmate commits a disciplinary infraction on January 1, 1985, and the sanction imposed includes a forfeiture of commutation credits. On January 25, 1985, the inmate commits another disciplinary infraction and is found "guilty." The inmate receives no disciplinary charge between January 25, 1985, to January 25, 1986. The inmate, therefore,

has 25 percent of his or her commutation credits restored. The inmate is again free of guilty findings from January 25, 1986, to January 25, 1987, an additional 25 percent of his or her commutation credits is restored. From January 25, 1987 to January 25, 1988, the inmate is again free of guilty finding but is not eligible for an additional 25 percent restoration of commutation time because more than three years have elapsed since January 1, 1985, the date which resulted in the loss of commutation credits.

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