

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).”

#### 10A:9-2.12 Override Code Reference Index

(a) In accordance with the description of the override code, when an inmate cannot be assigned to the recommended custody status indicated by the custody level score on the Initial or Reclassification Instruments, the appropriate override code shall be applied and any specific information concerning the reason for the override shall be documented and maintained in the inmate record:

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 or above pending United States Immigration and Naturalization Service (USINS) 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, 5.2, 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.

### 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;
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.

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.

#### 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.

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

1. The objective classification scoring results as indicated on form CRAU-006 or CRAU-007 (excluding inmates committed to A.D.T.C.);
2. Needs and interests expressed by inmate;
3. Age;
4. Family status;

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 detainees from jurisdictions other than New Jersey shall be eligible to be considered for reduced custody status provided:

1. The detainees for adjudicated offenses are for concurrent sentences which do not exceed the maximum of the term currently being served; or
2. An inmate has applied under the Interstate Agreement on Detainers (I.A.D.) for disposition of the detainee and the inmate is not brought to trial within 180 calendar days from the date of the 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 detainee 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 detainee(s) are eligible to be considered for gang minimum custody status and full minimum custody status unless the detainee(s) is for one of the following:

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

(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 United States Immigration and Naturalization Service (U.S.I.N.S.) has not responded to referrals within 120 calendar days.

(w) Inmates who have escaped or attempted escape and who are not excluded from reduced custody pursuant to N.J.A.C. 10A:9-4.8(e) shall be eligible for reduced custody as follows:

1. If an inmate is presently serving a sentence for escape or attempted escape, or has been found guilty of the prohibited act of escape or attempted escape from inside a medium or higher security facility or county jail, within or outside New Jersey, he or she shall be eligible to be considered for gang minimum custody status and full minimum custody status when five years have elapsed since the date of apprehension of the escape or the date of attempted escape and he or she is otherwise eligible according to the criteria set forth in this subchapter.

2. If an inmate is presently serving a sentence for escape or attempted escape, or has been found guilty of the prohibited act of escape or attempted escape from a

minimum security facility, detail or unit, within or outside New Jersey, he or she shall be eligible to be considered for gang minimum custody status and full minimum custody status when two years have elapsed from the date of apprehension of the escape or two years from the date of the attempted escape and the inmate is otherwise eligible according to the criteria set forth in this subchapter.

Amended by R.1987 d.156, effective April 6, 1987.

See: 19 N.J.R. 178(c), 19 N.J.R. 534(c).

Added (d); old (d) through (j) renumbered (e) through (k).

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

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

Added new (f) and (g), recodified and deleted references to "in-and-out custody status".

Administrative correction to (f).

See: 22 N.J.R. 1378(a).

Administrative correction to (k)3: changed (j) below to (l) below.

See: 22 N.J.R. 2969(a).

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

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

Revised (e), (f), (i); added (k)4; revised (l)3.

Amended by R.1994 d.197, effective April 18, 1994.

See: 26 N.J.R. 728(a), 26 N.J.R. 1658(b).

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

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

Substantially amended section.

Petition for Rulemaking.

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).

#### **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