

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 (a)2.

10A:9-2.10 Current Detainer/Open Charge Scale

(a) The following Detainer/Open Charge Scale shall be used to assess an inmate's current detainers or open charges and to assign points on the Initial and Reclassification Instruments:

1. Permissible detainers or open charges are detainers or open charges that do not preclude an inmate from being assigned to reduced custody. Inmates with permissible detainers/open charges shall receive zero points.
2. Non-permissible detainers or open charges are detainers or open charges that preclude an inmate from being assigned to reduced custody pursuant to N.J.A.C. 10A:9-4.6. Inmates with non-permissible detainers/open charges shall receive four points.

New Rule, R.2001 d.425, effective November 19, 2001.
 See: 33 N.J.R. 2390(a), 33 N.J.R. 3947(a).

10A:9-2.11 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. 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 or possession of electronic equipment not authorized for use or retention by an inmate such as, but not limited to, a cellular telephone(s), two-way radio(s), other communication device(s) and/or computer(s) and/or related device(s) and peripheral(s);
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.

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 due to a disciplinary sanction for an alcohol/drug related prohibited act pursuant to N.J.A.C. 10A:9-4.6.

(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.

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;

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

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

1. Field account of the present offense;
2. Prior criminal record;
3. Previous incarcerations;
4. Correctional facility adjustment;
5. The objective classification score;
6. Reports from professional and custody staff; and

7. Any reason which, in the opinion of the Administrator and the I.C.C., relates to the best interests of the inmate or the safe, orderly operation of the correctional facility or the safety of the community or public at large.

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

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

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

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

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

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

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

Added text to (f)6 "or the safety of the public at large or community."

Amended by R.1988 d.106, effective March 7, 1988.
See: 19 N.J.R. 2235(a), 20 N.J.R. 533(a).

Added (b)6.

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

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

Revised (a)6 and (e)6.

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

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

Substituted "I.C.C." for "Institutional Classification Committee" and "Administrator" for "Superintendent" throughout; (f), substituted "business" for "working" following "five".

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 A.2d 24.

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

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 A.2d 24.

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 Zero Tolerance Drug/Alcohol Policy related prohibited act pursuant to N.J.A.C. 10A:4-5.1 and 5.2 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 ineligible for custody status lower than medium custody for nine months following admission to a correctional facility. NERA parole violators with 24 months or less to serve may be considered for reduced custody status after the initial nine months of custody, and those with more than 24 months to serve may be considered for reduced custody after serving one half of the balance of time to be served.

(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 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 of-fense 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 consider-ation.

(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 custo-dy 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.

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 through-out.

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.

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 consid-eration.

(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 consid-ered for gang minimum custody status provided:

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