

CHAPTER 9

CLASSIFICATION PROCESS

Authority

N.J.S.A. 30:1B-6, 30:1B-10, 30:4-16.2, 2C:47-1 et seq. and 2A:164.

Source and Effective Date

R.2002 d.190, effective May 24, 2002.
See: 34 N.J.R. 1082(a), 34 N.J.R. 2030(a).

Chapter Expiration Date

Chapter 9, Classification Process, expires on May 24, 2007.

Chapter Historical Note

Chapter 9, Classification Process, was adopted as R.1987 d.48, effective January 20, 1987. See: 18 N.J.R. 1649(a), 19 N.J.R. 218(a).

Pursuant to Executive Order No. 66(1978), Chapter 9, Classification Process, expired on January 20, 1992.

Chapter 9, Classification Process, was adopted as new rules by R.1992 d.79, effective February 18, 1992. See: 23 N.J.R. 3721(a), 24 N.J.R. 612(a).

Pursuant to Executive Order No. 66(1978), Chapter 9, Classification Process, was readopted as R.1997 d.122, effective February 14, 1997. See: 29 N.J.R. 80(b), 29 N.J.R. 880(a). As a part of R.1997 d.122, effective March 17, 1997, Subchapter 9, Reception and Placement Process for Male Juveniles; Subchapter 10, Juvenile Institutional Classification Committee (J.I.C.C.); and Subchapter 11, Juvenile Female Classification Committee (J.F.C.C.), were repealed. See: 29 N.J.R. 80(b), 29 N.J.R. 880(a).

Chapter 9, Classification Process, was readopted as R.2002 d.190, effective May 24, 2002. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. INTRODUCTION

10A:9-1.1 Purpose

(a) The purpose of this chapter is to:

1. Establish objective criteria and a standardized process for inmate evaluation, custody level assignment, and correctional facility assignment;
2. Establish the responsibilities and functions of the Institutional Classification Committees (I.C.C.);
3. Establish eligibility criteria for reduced custody status;
4. Establish provisions for the award and forfeiture of commutation time and work credits;
5. Establish provisions for the transfer of inmates between correctional facilities;
6. Establish provisions for the parole recommendation process for inmates incarcerated pursuant to N.J.S.A. 2C:47 and 2A:164; and
7. Establish rules to fulfill the functions of the Department of Corrections as enumerated in N.J.A.C. 10A:1-1.1.

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

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

Added (a)7.

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

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

Deleted (a)6, relating to a process for assignment and transfer of juvenile offenders; and recodified (a)7 as (a)6.

Amended by R.2001 d.425, effective November 19, 2001.

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

In (a), added a new 1 and recodified former 1 through 6 as 2 through 7.

Amended by R.2002 d.190, effective June 17, 2002.

See: 34 N.J.R. 1082(a), 34 N.J.R. 2030(a).

Rewrote the section.

10A:9-1.2 Scope

(a) This chapter shall be applicable to the Division of Operations unless otherwise indicated.

(b) N.J.A.C. 10A:9-8 shall be applicable to inmates sentenced under N.J.S.A. 2C:47 and 2A:164 who are housed at either the Adult Diagnostic and Treatment Center (A.D.T.C.) or other facilities.

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

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

Substantially amended section.

10A:9-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

“A.D.T.C.” means the Adult Diagnostic and Treatment Center; the correctional facility designated to house inmates who have been convicted pursuant to N.J.S.A. 2C:47-1 et seq. and 2A:164-1 et seq.

“Assaultive offense” means a criminal conviction for an offense involving violence or use of force, or any offense involving the threat or attempted use of force or violence including, but not limited to, a sexual offense, carjacking, and kidnapping.

“Assessment scale” means a fixed progressive reference system used as a measurement standard to determine the relative value, degree, importance, rank, or rating of factors including, but not limited to, criminal and/or assaultive offenses or prohibited acts, escape history, time to expiration of sentence or parole, inmate age, education, employment history, alcohol/drug use, or correctional facility program participation.

“Classification Committee” means a group of correctional staff members that have been designated to make decisions related to the needs of inmates from admission to discharge.

“Classification material” means the documents in a classification folder on which information regarding an inmate is recorded such as, but not limited to, psychological or psychiatric evaluations, rap sheets, disciplinary charges, program participation, pre-sentence reports, and medical reports.

“Custody level” means the numerical rating that represents the supervision, movement, and access to jobs and programs afforded to inmates based upon objective and quantitative criteria.

“Custody status” means the custody assignment of an inmate. There are six categories:

1. Close custody;
2. Maximum custody;
3. Medium custody;

4. Gang minimum custody
5. Minimum custody; and
6. Community custody.

“Detainer” means a warrant or formal authorization to hold an inmate for prosecution or detention by a Federal, State or local law enforcement agency or the U.S. Immigration Department. Detainers may include, but are not limited to:

1. Adjudicated criminal charges for which sentence has been imposed;
2. Criminal charges resulting from indictment, for which there is no final disposition (open charges);
3. Warrants for violation of parole or probation; and
4. Immigration detainers.

“Gap time credit” means the credit awarded by the sentencing court for the period of time between dates of sentence when a defendant, who has previously been sentenced to imprisonment, is subsequently sentenced to another term for an offense committed prior to the former sentence, other than an offense committed while in custody.

“Increased custody” means assignment of an inmate to a custody level that requires more supervision.

“Initial classification” means the process by which an inmate is reviewed and/or evaluated upon admission to the Department of Corrections in order to determine the initial custody level, correctional facility, program and job assignment.

“Initial Instrument” means an objective classification scoring instrument that is weighted to evaluate an inmate’s prior criminal history and selected stability factors to determine the inmate’s initial custody level, correctional facility, program and job assignment.

“Intensive Supervision Program” means the program which permits certain offenders sentenced to State correctional institutions to be sentenced by a Resentencing Panel of judges to an intermediate form of punishment between incarceration and probation.

“Jones Farm” means a community based satellite unit of the Central Reception and Assignment Facility (CRAF), which houses inmates in full minimum custody status who meet the criteria for assignment to that facility.

“Objective classification” means the standardized evaluation and custody assignment score of an inmate based on the following criteria:

1. Severity of current offense;
2. Prior assaultive offense history;
3. Escape history;

4. History of institutional violence;
5. Balance of term to be served to expiration of sentence (initial only);
6. Alcohol/drug abuse (initial only);
7. Current detainer/open charges;
8. Prior felony convictions (initial only);
9. Education (initial only);
10. Employment (initial only);
11. Age;
12. Number of disciplinary reports (reclassification only);
13. Most severe disciplinary infraction received (reclassification only);
14. Program participation (reclassification only); and
15. Balance on parole eligibility date (reclassification only).

“Open charge” means an offense for which an inmate has been arrested but that lacks a final disposition and which is not represented by a detainer.

“Override Code Reference Index” means a list of justification codes used to document when an inmate is assigned to a custody status other than the recommended custody status indicated by the custody level score on an objective classification scoring instrument.

“Reclassification” means the process by which an inmate is reviewed and/or evaluated subsequent to initial classification to determine future custody level, correctional facility, program and job assignment.

“Reclassification Instrument” means an objective classification scoring instrument that is weighted to evaluate an inmate’s correctional facility adjustment subsequent to initial classification to determine custody level, correctional facility, program and job assignment.

“Reduced custody” means assignment of an inmate to a custody level that requires less supervision.

“Security level” means the numerical rating which represents the physical attributes of a correctional facility or housing unit in primarily objective terms related to perimeter security, operating procedures, and internal housing configurations to identify the highest custody level of inmates allowed.

“Severity of Offense Scale” means a fixed progressive reference system consisting of criminal offenses and point values designated for use with the Initial and Reclassification Instruments that are grouped according to the severity

and degree of the crime and used to rate criminal offense related criteria.

“Severity of Offense—Disciplinary Infractions Scale” means a fixed progressive reference system consisting of prohibited acts and point values grouped according to the severity of the infraction to rate the disciplinary history of an inmate on the reclassification instrument.

Amended by R.1988 d.332, effective July 18, 1988.
See: 20 N.J.R. 879(b), 20 N.J.R. 1716(a).

Added “Intensive Supervision Program”.
Administrative correction, effective January 27, 1989.
See: 21 N.J.R. 558(a).

Institutional name change.
Amended by R.1989 d.299, effective June 5, 1989.
See: 21 N.J.R. 664(a), 21 N.J.R. 1516(c).

Definition of “Gap time credit” added.
Amended by R.1997 d.122, effective March 17, 1997.
See: 29 N.J.R. 80(b), 29 N.J.R. 880(a).

Added “Custody status” and “Objective classification”; deleted “Commissioner”, “Division of Adult Institutions”, “Division of Juvenile Services”, “Indeterminate sentence”, “Prison complex”, “Prison sentence”, “Superintendent”, “Vroom Readjustment Unit”, and “Youth Complex”.

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

In the introductory paragraph, inserted “, when used in this chapter,” preceding “shall have” and substituted “indicates” for “indicts” preceding “otherwise”; added “Assaultive offense”, “Assessment scale”, “Custody level”, “Initial classification”, “Initial Instrument”, “Open charge”, “Override Code Reference Index”, “Reclassification”, “Reclassification Instrument”, “Security level”, “Severity of Offense Scale” and “Severity of Offense—Disciplinary Infractions Scale”.

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.D.T.C.” and “Classification Committee”, substituted “inmates” for “persons” and amended the N.J.S.A. references in “A.D.T.C.”; in “Classification material” inserted “but not limited to,” preceding “psychological” and substituted “reports” for “records, etc.”; in “Jones Farm” substituted “Central Reception and Assignment Facility (CRAF)” for “New Jersey State Prison”.

10A:9-1.4 Forms

(a) The following form related to classification shall be reproduced by each correctional facility from the original which is available by contacting the Administrative Rules Unit, New Jersey Department of Corrections.

1. 852-I Authorization for Emergency Transfer.

(b) The following forms related to the classification of inmates shall be reproduced by each correctional facility from the originals which are available by contacting the Office of Classification Monitoring and Support Services (O.C.M.S.S.), Division of Operations.

1. CRAF-001 Appeal Request for IICC/CRAF Assignment;
2. CRAF-002 Changes in Sentencing/Record Referral to IICC;
3. CRAF-003 Agreement of Transfer;
4. CRAF-003-D Special Needs Agreement of Transfer;

5. CRAF-006 Objective Classification Process—Initial Instrument; and

6. CRAF-007 Objective Classification Process—Reclassification Instrument.

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

Added (b).
Amended by R.2001 d.425, effective November 19, 2001.
See: 33 N.J.R. 2390(a), 33 N.J.R. 3947(a).

Rewrote (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 (b), added new 4, recodified existing 4 and 5 as 5 and 6.
Administrative change.
See: 35 N.J.R. 1137(a).

SUBCHAPTER 2. OBJECTIVE CLASSIFICATION PROCESS

10A:9-2.1 Initial classification

(a) Male offenders are admitted to the Central Reception and Assignment Facility (CRAF) or the Adult Diagnostic and Treatment Center (A.D.T.C.) and female offenders are admitted to the Edna Mahan Correctional Facility for Women (EMCF) where inmates begin the initial classification process.

(b) Upon admission to the reception unit, assignment to housing shall be made based upon the inmate’s:

1. Age;
2. Size;
3. Offense;
4. Sentence;
5. Previous incarcerations;
6. Mental status; or
7. Security needs.

(c) The initial classification process shall be completed within three weeks, unless unusual circumstances arise.

(d) During the initial classification process, the inmate shall be:

1. Photographed;
2. Fingerprinted;
3. Given orientation;
4. Given medical and dental examinations;
5. Interviewed by the psychologist, social worker and other staff members;
6. Given educational testing; and

43. .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. .651 being unsanitary or untidy: failing to keep one's person and one's quarters in accordance with posted standards; or
10. .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).

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 provided in the inmate record:

1. Code A: Medium custody status assignment or above due to mandatory minimum 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 E1: 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 E2: Permanent custody prohibition/bar. Gang minimum custody status assignment 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;

8. Code G: Medium custody status assignment or above with referral to the Inter-Institutional Classification Committee (I.I.C.C.) for discussion of issues such as, but not limited to, keep separates, notoriety of offense, medical problems, psychological problems;

9. Code H: Medium custody status assignment or above due to voluntary or administrative protective custody;

10. Code I: Medium custody status assignment or above due to requirements for Specialized Medical/Psychological Treatment pursuant to N.J.A.C. 10A:9-4.6. I.C.C. determination of:

- i. Discharge from a therapeutic community (T.C.) due to behavioral maladjustment;
- ii. Refusal to participate in a T.C.;
- iii. Non-acceptance of an assignment to a treatment program; or
- iv. Refusal to participate in clinical screening for a substance use disorder;

11. Code J: Requirement for medium custody status assignment or above due to pending disciplinary infraction(s);

12. Code K: Medium custody status assignment or above due to the classification committee discretion with serious doubts that the inmate will be successful in a lower than recommended custody status assignment at this time pursuant to N.J.A.C. 10A:9-4.5;

13. Code L: The classification committee discretion that indicates this inmate would be successful in a lower than recommended custody status assignment at this time; or

14. 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.

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.

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 Institutional Classification Committee (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. Assignment of inmates to 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.

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 (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".

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;

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 (c)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 N.J. Super. 24, 786 A.2d 165(A.D. 2001).

Under governing regulations, neither the nature of an inmate's conviction, except for those offenses specifically excluded, nor the location of a correctional facility within a residential area alone, may permanently disqualify an inmate from consideration for "full minimum custody status." *Smith v. Dept. of Corrections*, 346 N.J. Super. 24, 786 A.2d 165(A.D. 2001).

Decision of Institutional Classification Committee, initially withholding "full minimum custody status" from newly-transferred inmate with aggravated manslaughter conviction who had received that custody status at other prison facility, was not abuse of discretion. *Smith v. Dept. of Corrections*, 346 N.J. Super. 24, 786 A.2d 165(A.D. 2001).

10A:9-4.6 Criteria for consideration for gang minimum custody status and full minimum custody status

(a) Except as provided in N.J.A.C. 10A:9-4.7 and 4.8, inmates who meet the criteria set forth in this section are eligible to be considered for full minimum custody status preceded by the successful completion of a period of time in gang minimum custody status. Pursuant to N.J.A.C. 10A:9-4.3(d), the amount of time served in gang minimum custody status shall be at the discretion of the Institutional Classification Committee (I.C.C.).

(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 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 (h)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 (h)2 above.)

(i) 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.

(j) In any instance where the application of (i) 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 (i) above.)

(k) 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.

(l) 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

(m) Inmates with detainers from jurisdictions other than New Jersey shall be eligible to be considered for reduced custody status provided:

1. The detainers for adjudicated offenses are for concurrent sentences which do not exceed the maximum of the term currently being served; or
2. An inmate has applied under the Interstate Agreement on Detainers (I.A.D.) for disposition of the detainer and the inmate is not brought to trial within 180 calendar days from the date of the prosecuting authority's receipt of Form II and no court-ordered continuances were granted; or
3. A prosecutor has applied under the Interstate Agreement on Detainers (I.A.D.) for disposition of the detainer and the inmate is not brought to trial within 120 calendar days from the date of the inmate's arrival at the receiving state and no court ordered continuances were granted.

(n) 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.

(o) 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.

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

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

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

(r) 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.

(s) 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.

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

(u) 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.

(v) 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.

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.

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

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

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

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

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

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

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

(d) An inmate who presently is serving a sentence for one conviction of arson or fire setting or malicious destruction involving arson, with no previous such adult convictions; or an inmate presently serving a sentence for a nonarson offense but who has a prior adult conviction for arson, fire setting or malicious destruction involving arson, is eligible to be considered for gang minimum custody status provided:

1. He or she is otherwise eligible according to the criteria set forth in this subchapter; and

2. There is a psychiatric or psychological evaluation, not more than six months old, which focuses specifically on the inmate's likelihood for success in gang minimum custody status in light of the present or past conviction for arson.

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

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

(c)3. deleted and replaced, reference to "in-and-out custody status" deleted.

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

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

Revised (c)2.

Petition for Rulemaking.

31 N.J.R. 1385(a).

Petition for Rulemaking.

31 N.J.R. 3537(a), 31 N.J.R. 4127(b).

Petition for Rulemaking.

See: 32 N.J.R. 2165(b).

Amended by R.2002 d.190, effective June 17, 2002.

See: 34 N.J.R. 1082(a), 34 N.J.R. 2030(a).

In (c)3, substituted "Administrator" for "Superintendent" preceding "of A.D.T.C."

10A:9-4.8 Not eligible to be considered for reduced custody status

(a) Inmates serving sentences for the offenses described below are not eligible to be considered for any type of reduced custody status, except those inmates housed at the Adult Diagnostic Treatment Center (A.D.T.C.) described in N.J.A.C. 10A:9-4.7(c)3.

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

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

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

2C:14-2 Sexual assault; aggravated sexual assault;

2C:14-3 Aggravated criminal sexual contact; criminal sexual contact;

2C:24-4 Endangering welfare of children where the official version of the crime indicates that the inmate engaged in sexual contact pursuant to 2C:24-4(a) or committed an offense under 2C:24-4(b)(3, 4 or 5);

2C:5-1 Criminal attempt to commit any offense under 2C:14-2, 14-3, 23-4;

2C:5-2 Conspiracy to commit an offense under 2C:14-3, 24-4;

2C:47-1 Et seq. any conviction obtained under this section; 2A:86-3 Abduction of female under age 18 for purpose of marriage or carnal abuse;

2A:90-2 Assault with intent to commit rape or sodomy, or to carnally abuse a female under the age of 16, with or without her consent;

2A:96-3 Debauching or impairing the morals of a child under the age of 16;

- 2A:138-1 Rape or carnal abuse;
- 2A:138-2 Carnal knowledge of female inmates of a home or institution for the feeble minded or mentally ill;
- 2A:143-1 Sodomy;
- 2A:143-2 Sodomy with children under 16;
- 2A:85-5 Attempt to commit any of the foregoing offenses;
- 2A:85-14 Aiding and abetting the commission of any of the foregoing offenses;
- 2A:98-1 Conspiracy to commit any of the foregoing offenses; and/or
- 2A:164-3 Any conviction obtained under this section, except lewdness.

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

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

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

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

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

Exception to A.D.T.C. inmates added in (a).

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

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

Revised (e) and added (f).

Petition for Rulemaking.

See: 32 N.J.R. 608(c).

Case Notes

Decision of Institutional Classification Committee, initially withholding "full minimum custody status" from newly-transferred inmate with aggravated manslaughter conviction who had received that custody status at other prison facility, was not abuse of discretion. *Smith v. Dept. of Corrections*, 346 N.J. Super. 24, 786 A.2d 165(A.D. 2001).

Decision of assistant superintendent at prison facility, denying newly-transferred inmate's application for the "full minimum custody status" he had been granted at other facility, was not a final, immutable determination due to inmate's aggravated manslaughter conviction and/or the location of the prison with respect to a residential area; applicable regulations allowed continuous review of inmate's custody status. *Smith v. Dept. of Corrections*, 346 N.J. Super. 24, 786 A.2d 165(A.D. 2001).

Prisoner's loss of reduced custody status due to amendment of regulation under which such status was not authorized due to prisoner's attempted escape and conviction for escape did not implement the *ex post facto* clauses of the state or federal constitutions. *Muhammad v. Balicki*, 327 N.J. Super. 369, 743 A.2d 376 (N.J. Super. A.D. 2000).

10A:9-4.9 Assignment of inmates to satellite units, except Jones Farm

(a) Only those inmates who are classified as full minimum custody status may be assigned to satellite units.

(b) When assigning inmates to satellite units, the Institutional Classification Committee (I.C.C.) may consider the following factors:

1. Notoriety or reputation of a particular inmate in the surrounding community;
2. Proximity of the satellite unit to the local community;
3. Impact on community relations with the parent correctional facility, considering the inmate's criminal history and present record of incarceration; and
4. Any other factor which the Administrator or I.C.C. deems relevant to the inmate's successful placement at a satellite unit.

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

(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". Amended by R.2002 d.190, effective June 17, 2002.

See: 34 N.J.R. 1082(a), 34 N.J.R. 2030(a).

In (b)4, substituted "Administrator" for "Superintendent" and deleted "Institutional Classification Committee" preceding "I.C.C."

SUBCHAPTER 5. COMMUTATION AND WORK TIME

10A:9-5.1 Authority

(a) Commutation credit is awarded to inmates pursuant to N.J.S.A. 30:4-140, which provides:

1. For every year or fractional part of a year of sentence imposed upon any person committed to any State correctional facility for a minimum-maximum term there shall be remitted to him or her from both the maximum and minimum terms of his or her sentence, for continuous orderly deportment, the progressive commutation credits indicated in the schedule herein.
2. Commutation credits are not awarded until after the expiration of the mandatory minimum portion of the sentence. When the mandatory minimum part of the

sentence has been served, commutation credits are awarded on the full sentence.

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

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

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

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

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

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

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

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

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

Revised (a).

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

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

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

Petition for Rulemaking.

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

Case Notes

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 adult county correctional facility Administrator.

(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 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".

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.