

CORRECTIONS

THE COMMISSIONER

Classification Process

Proposed Amendments: N.J.A.C. 10A:9-1.1, 2.3, 2.4, 2.5, 2.6, 2.7, 2.13, 2.14, 3.1, 3.13, 3.14, 4.6, 4.7, 5.2, 7.3, and 10.2

Proposed Repeals: N.J.A.C. 10A:9-1.2 and 1.4

Authorized By: Marcus O. Hicks Esq., Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2020-068.

Submit written comments by September 18, 2020, to:

Kathleen Cullen

Administrative Rules Unit

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New Jersey Department of Corrections

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or via email to ARU@doc.nj.gov

The agency proposal follows:

Summary

The proposed amendments and repeals are intended to promulgate and incorporate some of the requirements set forth in the Isolated Confinement Restriction Act, N.J.S.A. 30:4-82.5

through 82.11 (the Act), effective August 1, 2020. This complex legislation affects sanctions, inmate housing arrangements, and custody status, all of which may be associated with inmate discipline for committing one or more of the prohibited acts at N.J.A.C. 10A:4-4.1. Because of the far-reaching changes to the Department of Corrections' (Department) rules required by the Act, the Department has determined to address each of these areas in separate rulemaking actions. Inmate discipline, housing sanctions for committing prohibited acts, classification, custody status, and the severity of offense scale are all inter-related. When changes are made to one of these areas they must be reflected, or balanced, across all of the areas. The changes involve the repeal of some rules, amendments of others, and the proposal of new rules.

The amendments proposed to the prohibited acts appearing in Chapter 4, Inmate discipline, form the basis for amendments to Chapter 9, which addresses placement in correctional facility, program, and job assignments, as well as inmate custody level. The prohibited acts are used in Chapter 9 as part of the objective criteria in the initial instrument and the reclassification instrument. Placements are determined using an initial classification evaluation instrument and a reclassification evaluation instrument. These evaluation tools utilize information on whether the inmate has committed the prohibited acts that are enumerated at N.J.A.C. 10A:4-4.1. The prohibited acts are also a component of the severity of offense scale at N.J.A.C. 10A:9-2.13.

At N.J.A.C. 10A:9-1.1(a), the Department proposes to restate more succinctly, the purpose of the chapter by deleting paragraphs (a)2, 3, 6, and 7 and making other technical changes.

Existing N.J.A.C. 10A:9-1.2 states that the chapter is applicable to the Division of Operations unless otherwise stated. The Department proposes to repeal the scope as the language better suited for internal documentation and management procedures.

The Department proposes to repeal N.J.A.C. 10A:9-1.4, Forms, as the forms are for internal Departmental use only and are better suited for internal documentation and management procedures. Given the proposed repeal of N.J.A.C. 10A:9-1.4, Forms, the Department further proposes to generalize all references to form numbers at N.J.A.C. 10A:9-2.14(a), 3.13(c) and (e), 4.6(h)2, and 7.3(c) and (e).

References to administrative segregation are proposed to be replaced with Restorative Housing Unit (R.H.U.) at N.J.A.C. 10A:9-2.3(b)6, 3.1(a)7, 3.14(c)1 and (d), and 5.2(f) as the Department has proposed to repeal administrative segregation rules at N.J.A.C. 10A:5-3.1 through 3.20 in a separate rulemaking, which also proposed the creation of the R.H.U. at N.J.A.C. 10A:5-9.1 through 9.6. As a result of that change, N.J.A.C. 10A:9-3.14(d) is also proposed for amendment to update the cross-reference.

N.J.A.C. 10A:9-4.7(c) specifies that two or more convictions for a list of criminal offenses including among other items, N.J.S.A. 2C:24-4.a, which permanently prohibits inmates from assignment to medium custody status. The criminal statute N.J.S.A. 2C:24-4.a was amended and the original offense description was recodified as N.J.S.A. 2C:24-4.a(1) and a new offense was added as N.J.S.A. 2C:24-4.a(2). The original offense or what is now part (1) describes a crime that permanently prohibits inmates from medium custody status. Part (2), however, involves a crime that would not permanently prohibit inmate assignment to medium custody status. In order to accurately reflect the criminal statute, in the context of custody status,

the Department proposes a technical amendment to N.J.A.C. 10A:9-4.7(c)1, offense N.J.S.A. 2C:24-4.a to specify N.J.S.A. 2C:24-4.a(1), rather than N.J.S.A. 2C:24-4.a in its entirety.

A modification at N.J.A.C. 10A:9-2.13(a) is proposed to add new paragraph (a)6 with point values for the new Category F infractions, which assign zero points if the Drug Diversion Program is completed, otherwise five points are assigned.

The Department proposes to incorporate the changes below at N.J.A.C. 10A:9-2.13(b) to align with amendments proposed to Category A prohibited acts at N.J.A.C. 10A:4-4.1(a)1, as follows:

- *.009 add the words “while assigned to a secure correctional facility” at the end of the description to distinguish when and where the infraction applies;
- *.050 add the words “or abuse” to the end of the description as it is intended to encompass not only sexual assault but also sexual abuse;
- *.151 replace “setting a fire” with “arson” to more clearly identify the deliberate nature of the act;
- The Department proposes to combine prohibited acts *.251 and *.252, so that prohibited act *.251 reads as “rioting or encouraging others to riot.”
- The Department proposes to relocate the following prohibited acts from N.J.A.C. 10A:9-2.13(c) in Category B to Category A at N.J.A.C. 10A:9-2.13(b) to align with the same changes proposed at N.J.A.C. 10A:4-4.1(a)1 and 2:
 - *.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;
 - *.008 abuse/cruelty to animals;

- *.010 engaging, participating, and/or recruiting others to participate in an activity(ies) related to a security threat group;
 - *.155 adulteration or tampering of any food or drink;
 - *.201 possession or introduction of an explosive, incendiary device, or any ammunition;
 - *.215 possession with intent to distribute or sell prohibited substances such as drugs, intoxicants, or related paraphernalia;
 - *.216 distribution or sale of prohibited substances such as drugs, intoxicants, or related paraphernalia;
 - *.253 engaging in or encouraging a group demonstration or work stoppage; and
 - *.704 perpetrating frauds, deceptions, confidence games, riots, or escape plots.
- The Department proposes to relocate prohibited act “*. 102 attempting or planning escape” from: N.J.A.C. 10A:9-2.13(c)9 Category B to Category A at N.J.A.C. 10A:9-2.13(b)12 to align with changes already proposed to N.J.A.C. 10A:4-4.1(a)1 and 3.
 - The Department proposes to relocate the following prohibited acts from N.J.A.C. 10A:9-2.13(d) Category C to Category B at N.J.A.C. 10A:9-2.13(c) to align with changes previously proposed at N.J.A.C. 10A:4-4.1(a)2 and 3:
 - *.051 engaging in sexual acts with others;
 - *.053 indecent exposure; and
 - *.254 refusing to work, or to accept a program or housing unit assignment.
 - The Department proposes to relocate prohibited act * .256 refusing to obey an order of any staff member from N.J.A.C. 10A:9-2.13(e) Category D to Category B at N.J.A.C. 10A:9-2.13(c) to align with changes already proposed at N.J.A.C. 10A:4-4.1(a)2 and 4.

- The Department proposes to relocate the following prohibited acts from N.J.A.C. 10A:9-2.14(c) Category B to Category F at N.J.A.C. 10A:9-2.13(g) to align with changes proposed to N.J.A.C. 10A:4-4.1(a)2 and 6:
 - *.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;
 - *.204 use of any prohibited substances such as drugs, intoxicants, or related paraphernalia not prescribed for the inmate by the medical or dental staff;
 - *.205 misuse of authorized medication;
 - *.258 refusing to submit to testing for prohibited substances;
 - *.259 failure to comply with an order to submit a specimen for prohibited substance testing (see N.J.A.C. 10A:3-5);
 - *.261 tampering with a test specimen;
 - *.551 making intoxicants, alcoholic beverages, or prohibited substances such as narcotics and controlled dangerous substances or making related paraphernalia; and
 - *.552 being intoxicated.
- At N.J.A.C. 10A:9-2.13(b), the Department proposes to add the words “from a secure facility” to the end of prohibited acts *.101, to create a differentiation between two types of escapes – one from a secure facility, which will be sanctioned as a Category A offense. The second type, escape from a residential community release program or from furlough will be treated as a Category C offense, and will be designated as prohibited act .101A. The Department is creating a similar differentiation in penalty for possession of money or currency in excess of \$50.00, unless specifically authorized to have the funds. If the prohibited act occurs in a security facility, it will be sanctioned as a Category B offense,

enumerated as *.207. If the action happens while an inmate is in a residential community release program, it will be sanctioned as a Category E offense, enumerated as .207A.

- The Department proposes to add two new prohibited acts, *.055 and *.056 in Category B at N.J.A.C. 10A:9-2.13(c) to align with the previously proposed amendments at N.J.A.C. 10A:4-4.1(a)2 in order to encourage inmate behaviors that are in compliance with Prison Rape Elimination Act (PREA) standards and new prohibited act *.900, also in Category B, for failure to complete the new proposed Drug Diversion Program.
- The Department proposes to delete Category B prohibited act *.255 at N.J.A.C. 10A:9-2.13(b), encouraging others to refuse to work or to participate in work stoppage because it duplicates the behavior prohibited in act *.253.
- In Category C, at N.J.A.C. 10A:9-2.13(d), the Department proposes to align with changes proposed to N.J.A.C. 10A:4-4.1(a)3 and 4 to remove the word “threats” from prohibited act .052 as new prohibited act *.055 in Category B at N.J.A.C. 10A:9-2.13(e) has been proposed to address sexual threats to another.
- The Department proposes to add a new prohibited act *.057 in Category C at N.J.A.C. 10A:9-2.13(d)4 to align with the previously proposed amendments at N.J.A.C. 10A:4-4.1(a)3 in order to encourage inmate behaviors that are in compliance with the Prison Rape Elimination Act (PREA) standards.
- In addition, the Department proposes to add prohibited act *.803 attempting to commit, aiding another person to commit, or making plans to commit any Category B offense to Category F at N.J.A.C. 10A:9-2.13(g)9.

- The Department proposes to add the words “to a staff member” at N.J.A.C. 10A:9-2.13(e), Category D prohibited act .304 to align with changes proposed at N.J.A.C. 10A:4-4.1(a)4 and to specify the prohibition is for use of abusive or obscene language to a staff member.

The prohibited acts included at N.J.A.C. 10A:9-2.13(b) and (c) also appear, in part, at N.J.A.C. 10A:9-2.4(c)4, 2.5(c)4, 2.6(b)3, and 2.7(b)3, as they relate to the initial classification evaluation process and the reclassification evaluation processes. The Department proposes to bring into alignment the prohibited acts used in those evaluation processes with the severity of offense scale at N.J.A.C. 10A:9-2.13(b) and (c) by way of the following amendments:

- New N.J.A.C. 10A:9-2.4(c)4x, xi, xii, and xiii; 2.5(c)4x, xi, xii, and xiii; 2.6(b)3x, xi, xii, and xiii; and 2.7(b)3x, xi, xii, and xiii, add four prohibited act recodifying existing prohibited acts in the sequence as needed. The four are: *.051 engaging in sexual acts with others, *.053 indecent exposure; *.055 making sexual threats to another, *.056 sexual contact, involving the intentional touching, directly or indirectly, through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person, excluding contact incidental to a physical altercation;
- At N.J.A.C. 10A:9-2.4(c)4ix, 2.5(c)4ix, 2.6(b)3ix, and 2.7(b)3ix, which all involve prohibited act *.050, the words “or abuse” is added to the end of the description;
- At N.J.A.C. 10A:9-2.4(c)4ix, 2.5(c)4ix, 2.6(b)3ix, and 2.7(b)3ix, which all involve prohibited act *.151, “setting a fire” is replaced with “arson”; and
- At N.J.A.C. 10A:9-2.4(c)4xiv and xv, 2.5(c)4xiv and xv, 2.6(b)3xiv and xv, and 2.7(b)3xiv and xv, which all involve combining prohibited acts *.251 and *.252, so that prohibited act *.251 will cover “rioting or encouraging others to riot.”

The prohibited acts set forth at N.J.A.C. 10A:9-2.4(c)4, 2.5(c)4, 2.6(b)3, and 2.7(b)3 should all contain the same list of prohibited acts, but prohibited acts *.012 and .014 do not appear at N.J.A.C. 10A:9-2.7(b)3. It is not known when they were inadvertently omitted. The Department proposes to rectify that by adding the following prohibited acts at N.J.A.C. 10A:9-2.7(b)3 as technical changes.

At N.J.A.C. 10A:9-3.14(c) the Department proposes a technical correction for grammatical purposes by replacing “to a” with “of committing.”

The Department proposes to delete N.J.A.C. 10A:9-10.2(c)5, as it also appears at N.J.A.C. 10A:9-10.2(b)5.

As the Department has determined that the comment period for this notice of proposal shall be 60 days, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments and repeals bring the rules into alignment with portions of N.J.S.A. 30:4-82.5 through 11 that restrict the use of isolated confinement in correctional facilities and require less restrictive sanctions for infractions when practicable.

The Department anticipates a positive social impact on the general public and inmate population resulting from the proposed rules changes. The law enforcement community may, however, feel that some process changes resulting from these changes could potentially jeopardize safety and security in correctional facilities. While the Department takes safety and security seriously and places safety as a paramount consideration, it believes the proposed changes can be managed consistent with safety concerns.

Economic Impact

Additional funding will be necessary to implement the proposed amendments and repeals resulting from the requirements of N.J.S.A. 30:4-82.5 through 11. The cost of meeting and maintaining the requirements of the proposed amendments and repeals will require, at a minimum, additional funding from the State to cover the additional cost of additional medical services; increased custody staff; additional social services and increased staff; information technology staff; and upgrades to report-generating software and systems.

The budget previously allocated by the State is insufficient to meet the added demands of the “Isolated Confinement Restriction Act.”

Federal Standards Statement

The amendments and repeals are proposed under the authority of the rulemaking requirements of the Department of Corrections at N.J.S.A. 30:1B-6 and 30:1B-10. The proposed amendments and repeals are not subject to any Federal statutes, requirements, or standards; therefore, a Federal standards analysis is not required.

Jobs Impact

The proposed amendments and repeals will generate additional jobs as identified in the Economic Impact above.

Agriculture Industry Impact

The proposed amendments and repeals will have no impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments and repeals do not impose reporting, recordkeeping, and other compliance requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The

proposed amendments only impose new reporting, recordkeeping, and other compliance requirements on the New Jersey Department of Corrections and governmental entities responsible for the enforcement of the rules.

Housing Affordability Impact Analysis

The proposed amendments and repeals shall have no impact on housing affordability and there is an extreme unlikelihood that the proposed amendments and repeals would evoke a change in the average costs associated with housing. The proposed amendments and repeals concern changes to inmate discipline brought about by requirements of the Act and the Department's efforts to effectuate less restrictive interventions for disciplinary infractions in New Jersey State correctional facilities, the New Jersey Department of Corrections, and governmental entities responsible for the enforcement of the rules.

Smart Growth Impact Development Analysis

The proposed amendments and repeals will have no impact on the achievement of smart growth and there is an extreme unlikelihood the proposed amendments and repeals will evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendments and repeals concern changes to inmate discipline brought about by requirements of the Act and the Department's efforts to effectuate less restrictive interventions for disciplinary infractions in New Jersey State correctional facilities, the New Jersey Department of Corrections, and governmental entities responsible for the enforcement of the rules.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department of Corrections has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults

and juveniles in the State. Accordingly, no further analysis is required.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10A:9-1.2 and 1.4

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

10A:9-1.1 Purpose

[(a)] The purpose of this chapter is to[:] **set forth**

[1. Establish] objective criteria [and a] **for** standardized [process for] inmate evaluations, custody level assignments, and correctional facility assignment[;]. **In addition, this chapter also sets forth**

[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[;] **and**

[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.]

10A:9-1.2 (Reserved)

10A:9-1.4 (Reserved)

SUBCHAPTER 2. OBJECTIVE CLASSIFICATION PROCESS

10A:9-2.3 Administration of objective classification scoring instruments

(a) (No change.)

(b) The Reclassification Instrument shall be administered to:

1.-5. (No change.)

6. Inmates released from [Administrative Segregation] **a Restorative Housing Unit**; and

7. (No change.)

(c)-(d) (No change.)

10A:9-2.4 Objective criteria for the Initial Instrument for Male Inmates

(a)-(b) (No change.)

(c) The objective criteria for the Initial Instrument for Male Inmates are as follows:

1.-3. (No change.)

4. History of institutional violence based on institutional disciplinary reports and/or criminal convictions for any of the following offenses during the previous five years of incarceration from the date of review (see the Institutional Violence Scale for Male Inmates at N.J.A.C. 10A:9-2.11):

i.-viii. (No change.)

ix. *.050 sexual assault **or abuse**;

x. *.051 **engaging in sexual acts with others**;

xi. *.053 **indecent exposure**;

xii. *.055 **making sexual threats to another**;

xiii. *.056 **sexual contact, involving the intentional touching, directly or indirectly, through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person, excluding contact incidental to a physical altercation**;

[x.] xiv. *.151 [setting a fire] **arson**;

[xi.] xv. (No change in text.)

[xii.] xvi. *.201 possession or introduction of an explosive, incendiary device, or any ammunition; **or**

[xiii.] xvii. *.251 rioting[;] **or encouraging others to riot.**

[xiv. *.252 encouraging others to riot.]

5.-6. (No change.)

10A:9-2.5 Objective criteria for the Initial Instrument for Female Inmates

(a)-(b) (No change.)

(c) The objective criteria for the Initial Instrument for Female Inmates are as follows:

1.-3. (No change.)

4. History of institutional violence based on institutional disciplinary reports and/or criminal convictions for any of the following offenses during the previous five years of incarceration from the date of review (see the Institutional Violence Scale for Female Inmates at N.J.A.C. 10A:9-2.12):

i.-viii. (No change.)

ix. *.050 sexual assault **or abuse**;

x. *.051 **engaging in sexual acts with others**;

xi. *.053 **indecent exposure**;

xii. *.055 **making sexual threats to another**;

xiii. *.056 **sexual contact, involving the intentional touching, directly or indirectly, through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person, excluding contact incidental to a physical altercation**;

[x.] xiv. *.151 [setting a fire] **arson**;

[xi.] xv. (No change in text.)

[xii.] xvi. *.201 possession or introduction of an explosive, incendiary device, or any ammunition; **or**

[xiii.] xvii. *.251 rioting[;] **or encouraging others to riot.**

[xiv. *.252 encouraging others to riot.]

5.-6. (No change.)

10A:9-2.6 Objective criteria for the Reclassification Instrument for Male Inmates

(a) (No change.)

(b) The objective criteria for the Reclassification Instrument for Male Inmates are as follows:

1.-2. (No change.)

3. History of institutional violence based on institutional disciplinary reports and/or criminal convictions for any of the following offenses during the previous five years of incarceration from the date of review (see the Institutional Violence Scale for Male Inmates at N.J.A.C. 10A:9-2.11):

i.-viii. (No change.)

ix. *.050 sexual assault **or abuse**;

x. *.051 **engaging in sexual acts with others**;

xi. *.053 **indecent exposure**;

xii. *.055 **making sexual threats to another**;

xiii. *.056 **sexual contact, involving the intentional touching, directly or indirectly, through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person, excluding contact incidental to a physical altercation**;

[x.] xiv. *.151 [setting a fire] **arson**;

[xi.] xv. (No change in text.)

[xii.] xvi. *.201 possession or introduction of an explosive, incendiary device, or any ammunition; **or**

[xiii.] xvii. *.251 rioting[;] **or encouraging others to riot**.

[xiv. *.252 encouraging others to riot.]

4.-8. (No change.)

10A:9-2.7 Objective criteria for the Reclassification Instrument for Female Inmates

(a) (No change.)

(b) The objective criteria for the Reclassification Instrument for Female Inmates are as follows:

1.-2. (No change.)

3. History of institutional violence based on institutional disciplinary reports and/or criminal convictions for any of the following offenses during the previous five years of incarceration from the date of review (see the Institutional Violence Scale for Female Inmates at N.J.A.C. 10A:9-2.12):

i.-vi. (No change.)

**vii. *.012 throwing bodily fluid at any person or otherwise purposely
subjecting such person to contact with a bodily fluid;**

**viii. *.014 unauthorized physical contact with any person with an article, item, or
material, such as anything readily capable of inflicting bodily injury;**

[vii] **ix. *.050 sexual assault or abuse;**

x. *.051 engaging in sexual acts with others;

xi. *.053 indecent exposure;

xii. *.055 making sexual threats to another;

**xiii. *.056 sexual contact, involving the intentional touching, directly or indirectly,
through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person,
excluding contact incidental to a physical altercation;**

[viii.] **xiv. *.151 [setting a fire] arson;**

[ix.] **xv. (No change in text.)**

[x.] **xvi. *.201 possession or introduction of an explosive, incendiary device, or
any ammunition; or**

[xi.] **xvii. *.251 rioting[;] or encouraging others to riot.**

[xii. *.252 encouraging others to riot.]

4.-8. (No change.)

10A:9-2.13 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 of incarceration. The Severity of Offense--Disciplinary Infraction Scale has the following categories and point values:

1.-4. (No change.)

5. Category E and none: zero points[.]; **and**

6. Category F: zero points if the Drug Diversion Program is successfully completed, otherwise five points.

(b) The following prohibited acts appear at the Category A level of the Severity of Offense--
Disciplinary Infractions Scale.

1.-3. (No change.)

4. *.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.] **5.** (No change in text.)

6. *.008 abuse/cruelty to animals;

[5.] **7. *.009** misuse, possession, distribution, sale, or intent to distribute or sell, an electronic communication device, equipment, or peripheral that is capable of transmitting, receiving, or storing data and/or electronically transmitting a message, image, or data that is not authorized for use or retention **while assigned to a secure correctional facility** (see "electronic communication device" definition at N.J.A.C. 10A:1-2.2);

8. *.010 engaging, participating, and/or recruiting others to participate in an activity(ies) related to a security threat group;

[6.] **9.** (No change in text.)

[7.] **10. *.050** sexual assault **or abuse;**

[8.] **11. *.101** escape **from a secure facility;**

12. *.102 attempting or planning escape;

[9.] **13. *.151** [setting a fire] **arson;**

14. *.155 adulteration or tampering of any food or drink;

15. *.201 possession or introduction of an explosive, incendiary device, or any ammunition;

[10.] **16.** (No change in text.)

17. *.215 possession with intent to distribute or sell prohibited substances, such as drugs, intoxicants, or related paraphernalia;

18. *.216 distribution or sale of prohibited substances such as drugs, intoxicants, or related paraphernalia;

[11.] **19. *.251 rioting or encouraging others to riot;**

[12. *.252 encouraging others to riot;]

20. *.253 engaging in or encouraging a group demonstration or work stoppage;

[13.] **21. *.360 unlawfully obtaining or seeking to obtain personal information pertaining to an inmate's victim or the victim's family or pertaining to DOC staff or other law enforcement staff or the family of said staff; [or]**

22. *.704 perpetrating frauds, deceptions, confidence games, riots, or escape plots;
or

[14.] **23.** (No change in text.)

(c) The following prohibited acts appear at the Category B level of the Severity of Offense--Disciplinary Infractions Scale.

1.-2. (No change.)

[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. *.008 abuse/cruelty to animals;

5. *.010 participating in an activity(ies) related to a security threat group;]

Recodify existing 6. - 7 as **3. - 4.** (No change in text.)

5. *.051 engaging in sexual acts with others;

6. *.053 indecent exposure;

[8.] 7. (No change in text.)

8. *.055 making sexual threats to another;

9. *.056 sexual contact, involving the intentional touching, directly or indirectly, through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person, excluding contact incidental to a physical altercation;

[9. *.102 attempting or planning escape;]

10.-12. (No change.)

[13. *.155 adulteration of any food or drink;

14. *.201 possession or introduction of an explosive, incendiary device or any ammunition;

15. *.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;

16. *.204 use of any prohibited substances such as drugs, intoxicants or related paraphernalia not prescribed for the inmate by the medical or dental staff;

17. *.205 misuse of authorized medication;]

[18.] **13. *.207 possession of money or currency (in excess of [\$ 50.00] **\$50.00**) unless specifically authorized [substances such as drugs, intoxicants or related paraphernalia] **in a secure facility;****

Recodify existing 19.-20. as **14.-15.** (No change in text.)

[21. *.215 possession with intent to distribute or sell prohibited substances such as drugs, intoxicants or related paraphernalia;

22. *.216 distribution or sale of prohibited substances such as drugs, intoxicants or related paraphernalia;

23. *.253 engaging in, or encouraging, a group demonstration;

24. *.255 encouraging others to refuse to work or participate in work stoppage;

25. *.258 refusing to submit to testing for prohibited substances;

26. *.259 failure to comply with an order to submit a specimen for prohibited substance testing;]

16. *.254 refusing to work, or to accept a program or housing unit assignment;

17. *.256 refusing to obey an order of any staff member;

[27.] **18.** (No change in text.)

[28. *.261 tampering with a urine specimen;]

Recodify existing 29.-31. as **19.-21.** (No change in text.)

[32. *.551 making intoxicants, alcoholic beverages, or prohibited substances such as narcotics and controlled dangerous substances or making related paraphernalia;

33. *.552 being intoxicated;

34. *.704 perpetrating frauds, deceptions, confidence games, riots or escape plots;]

Recodify existing 35.-37. as **22.-24.** (No change in text.)

25. *.900 failure to complete a Drug Diversion Program.

(d) The following prohibited acts appear at the Category C level of the Severity of Offense--
Disciplinary Infractions Scale

1.-2. (No change.)

[3. .051 engaging in sexual acts with others;]

[4.] **3.** .052 making sexual proposals [or threats] to another;

[5. .053 indecent exposure;]

4. .057 Sexual harassment involves repeated and/or unwelcomed sexual advances, request for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature;

5. .101A Escape from a residential community release program or furlough;

6.-8. (No change.)

[9. .254 refusing to work, or to accept a program or housing unit assignment;]

Recodify existing 10.- 24. as **9. - 23.** (No change in text.)

(e) The following prohibited acts appear at the Category D level of the Severity of Offense—
Disciplinary Infractions Scale.

1.-3. (No change.)

[4. .256 refusing to obey an order of any staff member;]

Recodify existing 5.-10. as **4.-9.** (No change in text.)

(f) The following prohibited acts appear at the Category E level of the Severity of Offense--
Disciplinary Infractions Scale.

1. .207A possession of money or currency (in excess of \$50.00), unless specifically authorized, in a residential community release program;

Recodify existing 1.-16. as **2.-17.** (No change in text.)

(g) The following prohibited acts appear at the Category F level of the Severity of Offense--
-Disciplinary Infractions Scale.

1. ***.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;**
2. ***.204 use of any prohibited substances such as drugs, intoxicants, or related paraphernalia not prescribed for the inmate by the medical or dental staff;**
3. ***.205 misuse of authorized medication;**
4. ***.258 refusing to submit to testing for prohibited substances;**
5. ***.259 failure to comply with an order to submit a specimen for prohibited substance testing (see N.J.A.C. 10A:3-5);**
6. ***.261 tampering with a test specimen;**
7. ***.551 making intoxicants, alcoholic beverages, or prohibited substances, such as narcotics and controlled dangerous substances, or making related paraphernalia;**
8. ***.552 being intoxicated; and**
9. ***.803 attempting to commit, aiding another person to commit, or making plans to commit any Category B offense.**

10A:9-2.14 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 status 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. When an override is invoked, [Form OC-00] a Request for Override Approval **form** must be completed and forwarded to the Division of Operations for final approval:

SUBCHAPTER. 3. INSTITUTIONAL CLASSIFICATION COMMITTEE (I.C.C.)

10A:9-3.1 Responsibilities of the Institutional Classification Committee (I.C.C.)

(a) [Each] **Under the direction of the Commissioner, each** correctional facility shall establish an I.C.C. (**see N.J.A.C. 10A:1-2.3**), which shall be responsible for:

1.-6. (No change.)

7. Review of the imposition of [the Administrative Segregation] **a Restorative Housing Unit** sanction;

8.-10. (No change.)

10A:9-3.13 Transfers

(a)-(b) (No change.)

(c) In cases where an inmate's correctional facility adjustment and/or custody status indicates that a transfer to another correctional facility is appropriate, or when transfer is requested by an inmate[, Form CRAF-003], **an Agreement of Transfer form**[,] shall be initiated by the Administrator of the sending facility. If the Administrator of the correctional facility to which the inmate transfer is requested signs [Form CRAF-003] **the form**, the sending facility shall forward the completed form to the intake coordinator, or designee at the CRAF Intake Unit for submission to the Director, Division of Operations or designee for consideration for approval/disapproval.

(d) (No change.)

(e) [Form 852-I] **The Authorization for Emergency Transfer form** shall be utilized for disciplinary or administrative transfers of an emergency nature. Two copies of [Form 852-I] **the**

form shall be forwarded to the Assistant Commissioner or designee from whom verbal approval was secured within three business days of the verbal approval.

(f)-(h) (No change.)

10A:9-3.14 Required reviews

(a)-(b) (No change.)

(c) Inmates shall be reviewed and scored on the Reclassification Instrument upon a finding of guilt [to a] **of committing** prohibited act(s) when:

1. A sanction imposed by the Disciplinary Hearing Officer includes a referral to I.C.C., except if [administrative segregation] **a Restorative Housing Unit** is part of the imposed sanction;

2.-3. (No change.)

(d) When a disciplinary sanction includes [administrative segregation] **a Restorative Housing Unit**, the inmate shall be reviewed and scored on the Reclassification Instrument prior to release from [the Administrative Close Supervision Unit] **a Restorative Housing Unit** (see N.J.A.C. 10A:5-[3]9).

SUBCHAPTER 4. ELIGIBILITY CRITERIA FOR REDUCED CUSTODY CONSIDERATION

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

(a)-(g) (No change.)

(h) Inmates with detainers from jurisdictions other than New Jersey shall not be eligible to be considered for reduced custody status unless the following provisions apply:

1. (No change.)

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] **the application** and no court-ordered continuances were granted; or

3. (No change.)

(i)-(o) (No change.)

10A:9-4.7 Eligibility limitations for reduced custody status

(a)-(b) (No change.)

(c) An inmate who has two or more convictions, either present, prior, or a combination of present and prior for the offenses listed below, or for attempts or conspiracies to commit these offenses (see N.J.S.A. 2C:5-1 and 5-2) under the laws of this State, or any comparable offenses from any other state or the United States, is not eligible for reduced custody:

1. The sexual offenses are as follows:

...

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)]**4.a(1)** or

committed an offense under 2C:24-[4(b)(3, 4 or 5)]**4.b(3), (4), or (5)**;

...

2. (No change.)

(d)-(f) (No change.)

SUBCHAPTER 5. COMMUTATION AND WORK TIME

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

(a)-(e) (No change.)

(f) Work credits shall not be awarded to [administrative segregation] **a Restorative Housing Unit** inmates.

SUBCHAPTER 7. INTER-INSTITUTIONAL TRANSFER

10A:9-7.3 Procedure for reviewing emergency transfer requests

(a)-(b) (No change.)

(c) [Form 852—I] **An** Authorization for Emergency Transfer **form** shall be utilized for disciplinary or administrative transfers of an emergent nature[. A copy of Form 852—I] **and** shall be forwarded to the Assistant Commissioner, or the Director from whom verbal approval was secured within three business days of the verbal approval.

(d) (No change.)

(e) When the Assistant Commissioner[,], or the Director confirms the transfer, a copy of [Form 852-I Authorization for Emergency Transfer] **the authorization form** shall be forwarded to the following:

1.-2. (No change.)

(f) (No change.)

SUBCHAPTER 10. RESIDENTIAL COMMUNITY PROGRAM NOTIFICATION
COMMITTEE

10A:9-10.2 Composition of the Residential Community Program Notification Committee

(a)-(b) (No change.)

[(c) A representative from the Office of Victims Services shall serve as a non-voting member of the Committee.]