

RULE PROPOSALS INTERESTED PERSONS

The Department of Corrections provides notices of rule proposals in the New Jersey Register (N.J.R.), a semi-monthly official publication of the Office of Administrative Law which contains all State agency rule proposals and adoptions. The following paragraph is quoted from the Proposal section of the New Jersey Register: Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal. The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register. At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

CORRECTIONS

THE COMMISSIONER

Classification Process

Proposed Readoption with Amendments: N.J.A.C. 10A:9

Authorized By: Victoria L. Kuhn Esq., Acting 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 2022-048.

Submit written comments by June 3, 2022, to:

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or through email: ARU@doc.nj.gov

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1, N.J.A.C. 10A:9 was scheduled to expire on April 24, 2022. Pursuant to N.J.S.A. 52:14B-5.1.c(2), as the Department of Corrections ("Department" or "DOC") submitted this notice of proposal to the Office of Administrative Law prior to that date, the chapter expiration date was extended 180 days to October 21, 2022. The Department has reviewed these rules and, with the exception of the proposed amendments, has determined them

to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The rules are, therefore, proposed for readoption with amendments.

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

Subchapter 1 sets forth general provisions and definitions for Chapter 9. The definition of “Jones Farm” at N.J.A.C. 10A:9-1.3 includes a reference to Central Reception and Assignment Facility (CRAF), which closed in 2020, therefore, the Department proposes to replace that reference with New Jersey State Prison (NJSP) because the Jones Farm is now a satellite of NJSP. The Department also proposes to amend the definition of “Pre-Sentence Investigation Report” to accurately reflect what is included in the report by replacing the words “official version of the offense” with “summary of State’s allegations.”

Subchapter 2 sets forth rules for the objective classification processes that includes both initial classification and reclassification along with the objective criteria and the various scoring tools utilized in these processes. Since the initial classification function is now done in several correctional facilities, the Department proposes to replace the reference to CRAF with a more general reference of “a reception facility” at N.J.A.C. 10A:9-2.1(a), (e), and (f). An amendment is also proposed at N.J.A.C. 10A:9-2.1(a) to make it apply to all offenders generically and not specific to male and female offenders at the specific facilities.

The Department’s rules at N.J.A.C. 10A:9-2.8 are not intended to be all inclusive of the entire State criminal code, but are meant to include the more common offenses inmates are incarcerated for at DOC. The Department has seen a rise in inmates found guilty of several offenses in the criminal code that have not previously been listed in this section and proposes to add, at N.J.A.C. 10A:9-2.8(c), “money laundering 1st degree” with a criminal code reference to N.J.S.A. 2C:21-25 and at N.J.A.C. 10A:9-2.8(d) and (e), “disturbing/desecrating human remains-disturb/move/conceal 2nd degree” with a criminal code reference to N.J.S.A. 2C:22-1A.

Subchapter 3 includes the responsibilities of the Institutional Classification Committee (I.C.C.) and sets forth related rules to carry out those responsibilities. In addition to its classification functions, the I.C.C. reviews all disciplinary decisions resulting in Restorative Housing sanctions and has the authority to confirm or modify these sanctions. The Department proposes to replace “review of the imposition” with “confirmation or modification of the imposition” at N.J.A.C. 10A:9-3.1(a)7, to better reflect the scope of those responsibilities. N.J.A.C. 10A:9-3.1(a)10 states that the I.C.C. is also responsible for “reviews and approval or disapproval of applications for the Electronic Monitoring/Home Confinement Program” but that program no longer exists, so the Department proposes to delete this paragraph.

As transgender inmates assigned to Edna Mahan Correctional Facility for Women (EMCF) may now request a transfer to another correctional facility, the Department proposes to amend the chapter by removing the words “and the Edna Mahan Correctional Facility for Women (EMCF)” at N.J.A.C. 10A:9-3.13(a). Given the closing of CRAF, the Department proposes to delete “CRAF” at N.J.A.C. 10A:9-3.13(c) and to replace “CRAF” with “Garden State Youth Correctional Facility (GYCF) Prison Reception Unit” at N.J.A.C. 10A:9-3.13(h).

The Department proposes to replace “Bureau of Correctional Information Classification Services and the Office of Policy and Planning” with “Central Office Headquarters (COHQ)” at N.J.A.C. 10A:9-3.15(b) because all written classification procedures are reviewed and updated annually by the Department’s headquarters’ staff.

Subchapter 4 includes eligibility criteria and assignment of inmates for reduced custody status. In order to more fully reflect the types of offenses in the New Jersey State criminal code on arson-related crimes, the Department proposes to add the words “or criminal mischief involving arson” at N.J.A.C. 10A:9-4.7(d).

Subchapter 5 sets forth rules for commutation and work time credits including forfeiture, restoration, and reports of earned credits. Based on experience with N.J.A.C. 10A:9-5.1(a)2, the Department proposes to clarify the language at N.J.A.C. 10A:9-5.1(a)2 by replacing the existing language with “Commutation credit will not reduce the statutory minimum term.” The Department proposes new N.J.A.C. 10A:9-5.1(c) to include provisions for the public health emergency credits established at P.L. 2020, c. 111, and to add new N.J.A.C. 10A:9-5.1(d) to include provisions for special credits that are awarded at the discretion of the Commissioner of the Department of Corrections for achievements in education or workforce training.

The Department proposes to add “special credits” along with the other credits already listed at N.J.A.C. 10A:9-5.2(b) and (c) to explain when these credits are not applicable. The Department proposes to improve readability and understanding at N.J.A.C. 10A:9-5.2(f) by replacing “a Restorative Housing Unit inmates” with “inmates sanctioned to a Restorative Housing Unit (RHU)” and adding “unless the inmate is enrolled in a formal school program approved by the I.C.C. (not independent study).”

At N.J.A.C. 10A:9-5.5(j), the Department proposes to replace “Central Reception and Assignment Facility (CRAF)” with “Garden State Youth Correctional Facility (GYCF)” to reflect current processes resulting from the closure of CRAF.

Subchapter 6 includes the information regarding the Institutional Classification Reception Committee (I.C.R.C.) along with committee responsibilities, committee composition and criteria for assignment, and classification of inmates. The Department proposes to clarify that the Office of Substance Abuse Programming and Addiction Services member shall be optional at N.J.A.C. 10A:9-6.2(c), as not all inmates require related programming and services.

Subchapter 7 sets forth rules for inter-institutional transfers including initiating transfers, review of transfers, and criteria to be used during review of a transfer and, at N.J.A.C. 10A:9-7.2(e), the Department proposes to remove “CRAF-003” as it no longer applies with the closure of CRAF.

Subchapter 8 sets forth rules for the Special Classification Review Board or S.C.R.B. including, but not limited to, responsibilities of the board, reviews, decision appeals, and referrals to the State Parole Board.

Subchapter 9 includes rules regarding the Community Corrections Classification Committee (C-4), including its responsibilities, composition, and decision-making criteria.

Subchapter 10 sets forth rules for the responsibilities, composition, and sets forth rules for criteria of the Residential Community Program Notification Committee.

Social Impact

The rules proposed for readoption with amendments provides information regarding the classification process. The Department anticipates a positive social impact as a result of the rules proposed for readoption with amendments, as the rules are necessary and the amendments reflect recent changes within the Department.

Economic Impact

Additional funding is not necessary to implement the requirements of the rules proposed for readoption with amendments. The cost of meeting and maintaining the requirements of the

rules proposed for readoption with amendments is met by the Department through the established budget with funds allocated by the State and has no external economic impact.

Federal Standards Statement

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

Jobs Impact

The rules proposed for readoption with amendments will cause neither the generation nor the loss of any jobs.

Agriculture Industry Impact

The rules proposed for readoption with amendments will have no impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the rules proposed for readoption with amendments do not impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption with amendments affect the New Jersey Department of Corrections and governmental entities responsible for the enforcement of the rules.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will have no impact on housing affordability and there is an extreme unlikelihood that the rules proposed for readoption with amendments would evoke a change in the average costs associated with housing. The rules proposed for readoption with amendments concern the classification process used by the New Jersey Department of Corrections, and governmental entities responsible for the enforcement of the rules.

Smart Growth Impact Development Analysis

The rules proposed for readoption with amendments will have no impact on the achievement of smart growth and there is an extreme unlikelihood the rules proposed for readoption with amendments 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 rules proposed for readoption with amendments concern the classification process, inmates, the New Jersey Department of Corrections, and governmental entities.

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 or sentencing. The classification process does impact probation and potentially parole and has been implemented and updated in compliance with related State laws. Accordingly, no further analysis is required.

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

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

SUBCHAPTER 1. GENERAL PROVISIONS

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:

...

"Jones Farm" means a community-based satellite unit of [the Central Reception and Assignment Facility (CRAF)] **New Jersey State Prison (NJSP)** that houses inmates in full minimum custody status who meet the criteria for assignment to that facility.

...

"Pre-Sentence Investigation Report" (PSI) means a report that contains the [official version of the offense] **summary of the State's allegations**, statements by the victim and defendant, the defendant's prior criminal history, and other information such as prior work and education history.

...

SUBCHAPTER 2. OBJECTIVE CLASSIFICATION PROCESS

10A:9-2.1 Initial classification

(a) [Male offenders] **Offenders** are admitted to [the Central Reception and Assignment Facility (CRAF)] **a reception facility** 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)-(d) (No change.)

(e) Pursuant to N.J.S.A. 2C:47-3, male inmates who have been admitted to the A.D.T.C. with sentences of more than seven years shall be scored on the initial instrument and transferred to [CRAF] **a reception facility** to receive a non-A.D.T.C. correctional facility assignment. These inmates shall be reassigned to the A.D.T.C. when the mandatory minimum sentence or sentence maximum reaches five years and seven months.

(f) At the end of the initial classification process, a male inmate admitted to the [CRAF] **reception facility** shall appear before the Institutional Classification Reception Committee (I.C.R.C.) where the inmate's recommended custody status and correctional facility/unit assignment shall be decided.

(g)-(i) (No change.)

10A:9-2.8 Severity of Offense Scale

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

(c) The following offenses appear at the high level of the Severity of Offense Scale:

1.-12. (No change.)

13. N.J.S.A. 2C:39-1 et seq. Firearms, Other Dangerous Weapons and Instruments of Crime - all 1st degree offenses; [or]

14. N.J.S.A. 2C:41-1 et seq. Racketeering--1st degree[.]; **or**

15. N.J.S.A. 2C:21-25 Money Laundering -- 1st degree.

(d) The following offenses appear at the moderate level of the Severity of Offense Scale:

1.-13. (No change.)

14. N.J.S.A. 2C:40-1 et seq. Other Offenses Relating to Public Safety--all 3rd degree offenses; [or]

15. N.J.S.A. 2C:41-1 et seq. Racketeering--all 2nd degree offenses[.]; **or**

16. N.J.S.A. 2C:22-1A Disturbing/Desecrating Human Remains-Disturb/Move/Conceal -- 2nd degree.

(e) The following offenses appear at the low moderate level of Severity of Offense Scale:

1. -21. (No change.)

22. N.J.S.A. 2C:39-1 et seq. Firearms, Other Dangerous Weapons and Instruments of Crime--all 3rd degree offenses; [or]

23. N.J.S.A. 2C:40-1 et seq. Other Offenses Relating to Public Safety--all 4th degree offenses[.];
or

24. N.J.S.A. 2C:22-1A Disturbing/Desecrating Human Remains-Disturb/Move/Conceal -- 3rd degree.

(f) (No change.)

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

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

(a) 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] **Confirmation or modification** of the imposition of a Restorative Housing Unit sanction;

8. Review of Restrictive Activities Program assignments at the Adult Diagnostic and Treatment Center (A.D.T.C.); **and**

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.]

(b)-(e) (No change.)

10A:9-3.13 Transfers

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

(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, 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 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)-(g) (No change.)

(h) The I.C.C. at [CRAF] **GYCF Prison Reception Unit** shall confirm all transfers and/or assignments of inmates to adult county correctional facilities contracted to house State-sentenced inmates.

10A:9-3.15 Written procedures

(a) (No change.)

(b) These written procedures shall be reviewed and updated annually and submitted to the [Division of Operations] **Central Office Headquarters (COHQ)**, for review and approval.

SUBCHAPTER 4. ELIGIBILITY CRITERIA FOR REDUCED CUSTODY CONSIDERATION

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

(a)–(c) (No change.)

(d) An inmate who has two or more convictions, either present, prior, or a combination of present and prior for arson, **or criminal mischief involving arson**, or attempts or conspiracies to commit arson under the laws of this State, or any comparable offenses from any other state or the United States, may not be considered for reduced custody.

(e)–(f) (No change.)

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. (No change.)

[2. Commutation credits shall not be awarded until after the expiration of the mandatory minimum portion of the sentence. When the mandatory minimum portion of the sentence has been served, commutation credits are awarded on the full sentence.]

2. Commutation credit will not reduce the statutory mandatory minimum term.

3.–5. (No change.)

(b) (No change.)

(c) Public Health Emergency Credits are awarded to inmates pursuant to P.L. 2020, c. 111, provided:

1. The Governor has declared a public health emergency, which arises as a result of a communicable or infectious disease, and results in substantial modifications to Department-wide facility operations;

2. An inmate is serving a sentence and is scheduled to be released from custody within 365 days;

3. Public health emergency credits shall provide further remission from both the minimum and maximum term of the inmate's sentence, including the statutory mandatory minimum term, at the rate of 122 days for each month, or portion thereof, served during the declared emergency;

4. An inmate shall not be awarded public health emergency credits in excess of 244 days of remission for any declared emergency;

5. Public health emergency credits shall not be awarded to an inmate serving a sentence for murder pursuant to N.J.S.A. 2C:11-3, aggravated sexual assault, pursuant to N.J.S.A. 2C:14-2.a, or any offense enumerated at N.J.S.A. 2C:47-1, and whose conduct was characterized by a pattern of repetitive, compulsive behavior;

6. Public health emergency credits shall not be awarded to mandatory parole supervision terms or parole supervision for life violation terms, if the sentence that imposed the supervision is an exclusionary offense; and

7. An inmate being released as a result of the application of public health emergency credits shall be notified, in writing, against making contact with any victim of the crime for which the inmate was convicted and shall acknowledge receipt of the written notifications regarding victim contact prohibition.

(d) “Special Credits” may be awarded at the discretion of the Commissioner.

1. Special Credits provide further remission from time of sentence for achievements in education or workforce training pursuant to N.J.S.A. 30:4-92a.

2. An inmate who completes an approved program on or after January 20, 2020, and the inmate’s current aggregate maximum release date is greater than 210 days may earn special credits that may reduce the maximum release date.

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

(a) (No change.)

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

(c) Commutation credits, work credits, gap time, **special credits**, and minimum credits shall not be used to reduce a maximum sentence to a period of incarceration that is less than the judicial or statutory mandatory minimum term.

(d)-(e) (No change.)

(f) Work credits shall not be awarded to [a Restorative Housing Unit] inmates **in a Restorative Housing Unit, unless the inmate is enrolled in a formal school program approved by the I.C.C. (not independent study).**

10A:9-5.5 Restoration of forfeited commutation credits

(a)-(i) (No change.)

(j) Any inmate serving a State prison sentence in an adult county correctional facility must submit an application for restoration of commutation credits to the Administrator of the [Central Reception and Assignment Facility (CRAF)] **Garden State Youth Correctional Facility (GYCF)**. The classification officer of that facility shall review the application. A review of the inmate's eligibility on restoration of credits by the classification officer shall be made in accordance with this subchapter and forwarded to the Administrator, who shall make the restoration determination.

SUBCHAPTER 6. INSTITUTIONAL CLASSIFICATION RECEPTION COMMITTEE (I.C.R.C.)

10A:9-6.2 Composition of the Institutional Classification Reception Committee (I.C.R.C.)

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

(c) A representative from the Office of Substance Abuse Programming and Addiction Services [shall] **will** serve as [a] **an optional** member of the I.C.R.C.

SUBCHAPTER 7. INTER-INSTITUTIONAL TRANSFER

10A:9-7.2 Procedure for reviewing nonemergency transfer requests

(a)-(d) (No change.)

(e) If approved by the Administrator of the receiving facility, the Administrator at the correctional facility where the inmate is housed shall forward the [CRAF-003] Agreement of Transfer form to the intake coordinator who shall make the necessary arrangements to effectuate the transfer.