

## RULE PROPOSALS

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### 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.

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### CORRECTIONS

#### THE COMMISSIONER

##### Substance Use Disorder Treatment Programs

##### **Proposed Readoption with Amendments: N.J.A.C. 10A:24**

Authorized By: Gary M. Lanigan, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10; and *Carl K. Hampton v. Department of Corrections*, 336 N.J.Super. 520 (App. Div. 2001).

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

Proposal Number: PRN 2014-140.

Submit written comments by November 1, 2014, to:

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The agency proposal follows:

### **Summary**

Pursuant to Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1.b, N.J.A.C. 10A:24 expires on July 26, 2014. Pursuant to N.J.S.A. 52:14B-5.1.c(2), as the Department of Corrections (“Department” or “NJDOC”) submitted this notice of proposal to the Office of Administrative Law prior to that date, the chapter expiration is extended 180 days to January 22, 2015. The Department has reviewed these rules and, with the exception of the amendments proposed herein, 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 at this time.

Subchapter 1 provides the purpose, scope, definitions, authority, and forms applicable to the chapter. Subchapter 2 sets forth the treatment and service provisions of the Department.

The proposed amendments to N.J.A.C. 10A:24 are intended to state the provisions regarding the Department’s Substance Use Disorder Treatment Programs currently in place among the inmate population.

1. The Department proposes technical amendments to N.J.A.C. 10A:24-1.3 (definitions of "case management," "file review assessment," "Office of Drug Programs," "Therapeutic Community Liaison," and "Therapeutic Community program waiting list"); N.J.A.C. 10A:24-1.5(a); 2.2(b), (c), and (f)3i; 2.3(b)3i; 2.5(e)1; 2.8(a); 2.9(a) and (b)3; 2.10(g)1; 2.12; and 2.13(a), to reflect the fact that the Office of Drug Programs (ODP) has been renamed the Office of Substance Abuse Programming and Addictions Services (OSAPAS); and in the case of N.J.A.C. 10A:24-1.5(a) and 2.12, that the newly renamed OSAPAS no longer falls under the Office of Drug Programs, but rather is now under the Division of Operations, within the Health Services Unit.

This name change from ODP to OSAPAS and change in chain of command reflects more common community standards, avoids the negative connotation associated with the word “drug,” and is more consistent with the current medical model of substance abuse treatment. It reflects the understanding that not all substance abuse problems involve illicit drugs.

2. The Department proposes to amend N.J.A.C. 10A:24-1.3, the definition of “Therapeutic Community program waiting list” and amendments to N.J.A.C. 10A:24-2.4(a)2, 2.9(b)3, 2.10(b), and 2.12(a)2 to substitute the term “eligibility list” for “waiting list” when referring to Therapeutic Community (T.C.) programs. The inmate must qualify for the T.C. program based on his or her Addiction Severity Index (ASI) score and classification status. The term “eligibility list” more accurately describes departmental procedure. Note that this change does not affect the Mutual Agreement Program (MAP), for which there is a waiting list for inmates who are eligible.

3. The Department proposes to amend N.J.A.C. 10A:24-2.2(e) and (g) to delete references to the I-1 override code. The I-1 override code is no longer used within the

Department. Based upon Dr. James Austin's reevaluation of the current Objective Classification System during 2009-2010, it was determined that there is no data to support reduced custody restrictions based solely on drug treatment refusals or non-participation. Dr. Austin is a consultant to correctional facilities and helped design the NJDOC Objective Classification System (OCS).

Eliminating the I-1 override will increase the pool of minimum eligible inmates and possibly community program candidates. Minimum custody status provides the inmate with opportunities for residential community programs and credits that may reduce the parole eligibility date and maximum expiration date. The current override creates an undue hardship by restricting the inmate's ability to progress toward community integration and release.

This proposed change is made to more accurately reflect the Department's current practice. Elimination of the I-1 override code eliminates the mandatory loss of custody status based solely on drug treatment refusals or non-participation. As such, the proposed amendments will have an overall positive impact.

4. The Department proposes to amend N.J.A.C. 10A:24-2.8(a) to add Engaging the Family programs. In addition, the Department proposes to amend N.J.A.C. 10A:24-2.8(a) to delete the term "assign" and replace it with "refer" to reflect the fact that OSAPAS only refers, but does not assign, eligible inmates to ancillary service programs. As such, the term "refer" more accurately describes departmental procedure.

5. The Department proposes to amend N.J.A.C. 10A:24-2.3(b) and 2.5(c)2 and (e) to delete language indicating that loss of custody status is mandatory if an inmate refuses to accept an assignment to a treatment program or is discharged from a T.C. program for behavioral maladjustment or refusal to participate. Instead the regulations are amended to add language indicating that such refusal or discharge "may affect [the inmate's] consideration" for any custody status lower than medium custody. Language in the affected subsections inconsistent with this amendment is eliminated. These changes are needed to be consistent with the elimination of the I-1 override code (see item 3 above), and more accurately reflect the Department's current practice.

6. The Department proposes to amend N.J.A.C. 10A:24-2.5(b)3 to expand the custody status of inmates eligible for the T.C. program, from "full minimum," to "medium, gang minimum, or full minimum" custody status, and to delete the phrase, "or be within one year of eligibility for full minimum custody status."

This change is made to provide treatment to a broader range of custody status inmates, and more accurately reflects the Department's current practice. This change is needed to be consistent with the elimination of the I-1 override code (see item 3 above). The requirement that the inmate "be within one year of eligibility for full minimum custody status" is no longer necessary in light of the amended language expanding the custody status of inmates eligible for the T.C. program to medium, gang minimum, or full minimum custody.

7. The Department proposes to amend N.J.A.C. 10A:24-2.11(a) to specify that I.C.C. review of non-acceptance of a treatment program to be limited to MAP treatment and to amend N.J.A.C. 10A:24-2.11(a)1 to add that inmates who refuse to accept assignment to a MAP treatment program shall be subject to reclassification and to delete existing language regarding custody status as unnecessary. The addition of the term "MAP" in subsection (a) is needed to clarify that only MAP non-acceptance shall subject

the inmate to reclassification of custody status, among other things. The amendment to paragraph (a)1 is needed to be consistent with the elimination of the I-1 override code (see item 3 above) and more accurately reflects the Department's current practice. The amendment makes clear that, unlike other treatment program non-acceptance, which "may" affect the inmate's consideration for any custody status lower than medium custody, inmates who do not accept assignment to a MAP treatment program shall be subject to disciplinary action and shall be subject to reclassification, including, among other things, loss of custody status.

8. The Department proposes to amend N.J.A.C. 10A:24-2.1(a)1 and (d) to replace reference to medical or dental staff with reference to qualified healthcare personnel when describing individuals who may prescribe drugs, intoxicants, or narcotic paraphernalia to an inmate. This change is made to reflect current standard medical terminology for designating such individuals in the healthcare profession.

9. Finally, in consultation with the New Jersey State Parole Board, the Department proposes to amend N.J.A.C. 10A:24-1.3 to delete the definition of "Intensive Parole Drug Program (I.P.D.P.)," and to amend N.J.A.C. 10A:24-2.12(a)4 and 2.13, and 2.13(a) to delete references to the Intensive Parole Drug Program (I.P.D.P.) and Alternative Sanction Program within the State Parole Board. The State Parole Board no longer utilizes such programs. Instead, references in N.J.A.C. 10A:24-2.12(a)4 and 2.13(a) to those deleted programs are replaced with the more general term "a State Parole Board program," as specific programs often change names or are eliminated over time. Accordingly, OSAPAS will no longer make referrals or recommendations concerning substance abuse treatment specifically to the I.P.D.P., but to a State Parole Board program(s) generally. Such amendments are necessary to more accurately reflect the Department's current practices and those of the State Parole Board.

The proposed amendments serve to directly enforce the Department's Substance Use Disorder Treatment Programs for inmates, which is expected to have an overall positive impact on inmate health and well-being.

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 rules proposed for readoption with amendments are anticipated to have an overall positive social impact. As noted, the rules proposed for readoption with amendments are intended to state the provisions regarding the Department's Substance Use Disorder Treatment Programs currently in place among the inmate population. As such, the rules proposed for readoption with amendments are necessary for the purpose of providing rules that comply with State law and reflect current organizational structure and programs. The rules proposed for readoption with amendments serve to directly enforce the Department's Substance Use Disorder Treatment Programs for inmates, which is expected to have an overall positive impact on inmate health and well-being.

### **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.

#### **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 30:1B-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 inmates, 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 would evoke a change in the average cost associated with housing in New Jersey. The rules proposed for readoption with amendments concern Substance Use Disorder Treatment Programs, and affect inmates, the New Jersey Department of Corrections, and governmental entities responsible for the enforcement of the rules.

#### **Smart Growth Development Impact Analysis**

The rules proposed for readoption with amendments will have no impact on smart growth development and will not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey. The rules proposed for readoption with amendments concern Substance Use Disorder Treatment Programs, and affect inmates, the New Jersey Department of Corrections, and governmental entities responsible for the enforcement of the rules.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10A:24.

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

## SUBCHAPTER 1. GENERAL PROVISIONS

### 10A:24-1.3 Definitions

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

...

"Case management" means the management of inmate cases in order to bring services, resources, and individuals together within a planned framework of action for purposes of achieving established goals. Case [Management] **management** services are provided by designated staff of the Office of [Drug Programs] **Substance Abuse Programming and Addictions Services**.

...

"File review assessment" means a thorough review of the contents of material in the inmate's classification folder. A file review assessment is conducted by trained staff of the Office of [Drug Programs] **Substance Abuse Programming and Addictions Services** in order to identify indications of current or past substance use.

["Intensive Parole Drug Program (I.P.D.P.)" means a parole program utilizing specially trained parole officers to provide intensive supervision to parolees in need of substance use disorder treatment.]

...

"Office of [Drug Programs] **Substance Abuse Programming and Addictions Services**" means the office within the Department of Corrections, Division of [Programs and Community] **Operations, within the Health Services Unit**, responsible for addressing the substance use disorders of the inmate population. The Office of [Drug Programs] **Substance Abuse Programming and Addictions Services** is responsible for the proper identification of inmate treatment needs, treatment dosages, and for referral to appropriate treatment programs. The Office of [Drug Programs] **Substance Abuse Programming and Addictions Services** oversees, monitors, develops, and implements research-based substance use disorder programming.

...

"Therapeutic Community Liaison" means a correctional facility staff member designated by the Administrator who acts as a contact between facility staff and the Office of [Drug Programs] **Substance Abuse Programming and Addictions Services**. The Therapeutic Community Liaison provides assistance in the tracking, monitoring, locating, referring, and otherwise facilitating the placement of inmates in need of treatment in the Therapeutic Community [Program] **program**.

"Therapeutic Community program [waiting] **eligibility** list" means a list of inmates identified as appropriate, eligible, and referred for T.C. [Program] **program** placement. The [waiting] **eligibility** list is maintained by the Office of [Drug Programs] **Substance Abuse Programming and Addictions Services** and distributed to correctional facilities to assist in the placement of inmates in a T.C.

...

### 10A:24-1.5 Forms

(a) The following forms related to correctional treatment programs shall be reproduced by each correctional facility/unit from originals that are available by contacting the Office of [Drug Programs] **Substance Abuse Programming and Addictions Services**, Division of [Programs and Community services] **Operations, within the Health Services Unit:**

1.-7. (No change.)

## SUBCHAPTER 2. TREATMENT PROGRAMS AND OTHER SERVICES

10A:24-2.1 Zero Tolerance Drug/Alcohol Policy, related sanctions, and other prohibited substance use sanctions

(a) As defined in N.J.A.C. 10A:1-2.2 and established in N.J.A.C. 10A:4-12, the Department of Corrections maintains a Zero Tolerance Drug/Alcohol Policy that applies to inmates confined in correctional facilities and is intended to:

1. Provide notice to inmates that the Department maintains a zero tolerance for the possession/sale/use by State inmates of any drugs, intoxicants, or narcotic paraphernalia not prescribed for the inmate by [medical or dental staff] **qualified healthcare personnel**; and

2. (No change.)

(b)-(c) (No change.)

(d) Inmates assigned to a residential community program who use prohibited substances such as drugs, intoxicants, or related paraphernalia not prescribed for the inmate by [the medical or dental staff] **qualified healthcare personnel** or who are intoxicated while assigned to a residential community program shall be:

1.-3. (No change.)

10A:24-2.2 Clinical screening of inmates

(a) (No change.)

(b) The Office of [Drug Programs] **Substance Abuse Programming and Addictions Services** shall provide trained clinical screeners to administer the Addiction Severity Index (A.S.I.), or an equivalent clinical screening and assessment instrument, to all inmates to identify inmates in need of substance use disorder treatment (see N.J.A.C. 10A:9-2). Inmates with an A.S.I. score of five or above shall be deemed to have a moderate to extreme substance use disorder and to be in need of intensive treatment.

(c) A trained clinical screener of the Office of [Drug Programs] **Substance Abuse Programming and Addictions Services** shall perform a file review assessment. All pertinent information gathered from the file review assessment shall be summarized on the "Inmate File Review Assessment Form" and placed with the corresponding A.S.I. or other addiction screening instrument in the inmate's classification folder at the reception center.

(d) (No change.)

(e) Inmates who refuse to participate in clinical screening shall receive disciplinary charge .707, failure to keep a scheduled appointment with medical, dental, or other professional staff. [The objective classification scoring instrument "I-1" override code shall be imposed and the inmate shall not be eligible for consideration for any custody status lower than medium custody until after clinical screening is completed. See N.J.A.C. 10A:9-2.12 and 4.6.]

(f) At the clinical screening, each inmate shall be requested to sign Form A.N.-1, Clinical Screening Advisory, immediately after the following statement:

"I have been informed that if I refuse clinical screening, I shall receive disciplinary charge .707, failure to keep a scheduled appointment with medical, dental or other professional staff, and shall not be eligible for consideration for any custody status lower than medium custody until after clinical screening is completed. I understand that I may apply for clinical screening after a minimum of 30 calendar days have elapsed from the date of my refusal."

1.-2. (No change.)

3. Clinical Screening Advisory forms shall be maintained in the inmate's classification folder and a copy provided to:

i. The Office of [Drug Programs] **Substance Abuse Programming and Addictions Services**; and

ii. (No change.)

(g) Inmates who refuse to participate in clinical screening shall be permitted to apply for the screening after a minimum of 30 calendar days have elapsed from the date of the refusal. [The objective classification scoring instrument "I-1" override code shall be removed after clinical screening.]

(h)-(j) (No change.)

10A:24-2.3 Assignment to substance use disorder continuum of care at institutional classification

(a) (No change.)

(b) Upon assignment to a treatment program, each inmate shall be requested to sign Form A.N.-2 Assignment Advisory immediately after the following statement:

"I have been informed that when I refuse to accept an assignment to a treatment program or am discharged from a T.C. program for behavioral maladjustment or refusal to participate, [I shall become ineligible for] **it may affect my** consideration for any custody status lower than medium custody [until after a T.C. program is successfully completed]. I understand that I may apply for program reconsideration after a minimum of 30 calendar days have elapsed from the date of my non-acceptance or discharge."

1.-2. (No change.)

3. Assignment Advisory forms shall be maintained in the inmate's classification folder and a copy provided to:

i. The Office of [Drug Programs] **Substance Abuse Programming and Addictions Services**; and

ii. (No change.)

10A:24-2.4 Continuum of care program referrals

(a) Upon institutional classification by the Institutional Classification Committee (I.C.C.), an inmate identified as being in need of treatment for a moderate to extreme substance use disorder shall be assigned to:

1. (No change.)

2. [A waiting] **An eligibility** list for the Therapeutic Community (T.C.) [Program] **program**, if the eligibility criteria at N.J.A.C. 10A:24-2.5 is met; or

3. (No change.)



10A:24-2.5 Therapeutic Community [Program] **program**

(a) (No change.)

(b) The criteria for initial referral and/or assignment to a T.C. program requires inmates to:

1.-2. (No change.)

3. Be currently classified as **medium, gang minimum, or** full minimum custody status [or be within one year of eligibility for full minimum custody status] pursuant to N.J.A.C. 10A:9-4, Eligibility criteria for reduced custody consideration.

(c) Discharge from a T.C. program for behavioral maladjustment or refusal to participate [shall result in]:

1. [Removal] **Shall result in removal** from the program; and

[2. Mandatory loss of reduced custody status via application of the objective classification scoring instrument "I-1" override code (see N.J.A.C. 10A:9-2.12), and the inmate shall remain ineligible for consideration for any custody status lower than medium custody until after a T.C. program is successfully completed]

**2. May affect consideration for any custody status lower than medium custody.**

(d) (No change.)

(e) Inmates discharged from a T.C. program due to behavioral maladjustment or a refusal to participate shall sign form T.C.-2 Therapeutic Community Discharge Summary. Form T.C.-2 shall inform inmates that [a mandatory loss of eligibility for] **such discharge may affect** consideration for any custody status lower than medium custody [shall be imposed until after T.C. program treatment is successfully completed], and that application for program reconsideration is permitted after a minimum of 30 calendar days have elapsed from the date of discharge. The name, title, and signature of the contact treatment program staff member providing Form T.C.-2 Therapeutic Community Discharge Summary shall be entered on the form. In the event that an inmate refuses to sign the form, the staff member shall sign a statement on Form T.C.-2 indicating the inmate's refusal to sign. Form T.C.-2 shall be maintained in the inmate's classification file and a copy provided to:

[i.] **1. The Office of [Drug Programs] Substance Abuse Programming and Addictions Services;** and

[ii.] **2.** (No change in text.)

(f)-(g) (No change.)

10A:24-2.8 Ancillary services

(a) The clinical staff from the Office of [Drug Programs] **Substance Abuse Programming and Addictions Services** shall identify and [assign] **refer** eligible inmates to ancillary service programs designed and implemented to address specific social services needs. Placement shall be based on availability and capacity. These programs include, but are not limited to:

1. Responsible parenting programs;

**2. Engaging the Family programs;**

Recodify existing 2.-3. as **3.-4.** (No change in text.)

10A:24-2.9 Role of the Therapeutic Community Liaison

(a) The Administrator of a correctional facility that maintains a T.C. shall designate a T.C. Liaison to be responsible for maintaining a liaison between the facility administrative staff, the Institutional Classification Committee (I.C.C.), the Office of [Drug Programs] **Substance Abuse Programming and Addictions Services**, contract treatment program Directors, and inmates.

(b) The T.C. Liaison shall also be responsible to:

1.–2. (No change.)

3. Monitor the T.C. program [waiting] **eligibility** list and work in conjunction with the Office of [Drug Programs] **Substance Abuse Programming and Addictions Services** to maintain a current list;

4.–7. (No change.)

10A:24-2.10 Role of the Institution Classification Committee (I.C.C.)

(a) (No change.)

(b) Upon I.C.C. approval, the I.C.C. shall provide notice of such approval to the correctional facility Classification Department. Form T.C.-1 Therapeutic Community Referral shall be forwarded to C.R.A.F. and C.R.A.F. shall maintain a T.C. program [waiting] **eligibility** list and coordinate assignment and transportation of approved inmates. The original Form T.C.-1 shall be placed into the classification folder of the inmate.

(c)–(f) (No change.)

(g) The I.C.C. of a correctional facility with a T.C. program shall ensure that the original Form T.C.-2 Therapeutic Community Discharge Summary is filed into the inmate's classification folder and a copy is provided to:

1. The Office of [Community and Drug Programs] **Substance Abuse Programming and Addictions Services**; and

2. (No change.)

10A:24-2.11 Inmate non-acceptance of treatment assignment

(a) Inmates who refuse to accept assignment to a MAP **treatment** program will be subject to disciplinary action. Inmates who refuse to accept assignment to other treatment programs shall not be subject to disciplinary action. Upon review by the I.C.C. of all **MAP** treatment program non-acceptance, the inmate shall:

[1. Not be eligible for consideration for any custody status lower than medium custody, or if already in a lower custody status, shall lose the custody status via imposition of the objective classification scoring instrument "I" override code until after a T.C. program is successfully completed. See N.J.A.C. 10A:9-2.12 and 4.6;]

**1. Be subject to reclassification;**

2.–4. (No change.)

10A:24-2.12 Role of the Office of [Drug Programs] **Substance Abuse Programming and Addictions Services**, Division of [Programs and Community] **Operations, within the Health Services Unit**

(a) The staff of the Office of [Drug Programs] **Substance Abuse Programming and Addictions Services**, Division of [Programs and Community ] **Operations, within the Health Services Unit** shall be responsible to:

1. (No change.)
2. Produce, monitor, update, and distribute the T.C. program [waiting] **eligibility** list;
3. (No change.)
4. Process contract treatment program referrals of inmates to [the Intensive Parole Drug Program (I.P.D.P.)] **a State Parole Board program;**
- 5.–10. (No change.)

10A:24-2.13 Recommendations for [Alternative Sanction Programs] **State Parole Board programs**

[(a)] The contract treatment program Director or designee may submit recommendations for parole supervision to the New Jersey State Parole Board through the Office of [Drug Programs] **Substance Abuse Programming and Addictions Services** that include [the Intensive Parole Drug Program (I.P.D.P.). The I.P.D.P. is an alternative Sanction Program for parolees who have completed a correctional facility T.C. program while incarcerated] **a State Parole Board program.**