

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

Close Custody Units

Proposed Readoption with Amendments: N.J.A.C. 10A:5

Proposed Repeal and New Rule: N.J.A.C. 10A:5-2.10

Proposed Repeal: N.J.A.C. 10A:5-2.11

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

Authority: N.J.S.A. 30:1B-6 and 30:1B-10 and P.L. 2007 c. 204.

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

Proposal Number: PRN 2015-040.

Submit written comments by July 17, 2015, to:

Kathleen Cullen
Administrative Rules Unit
Office of the Commissioner
New Jersey Department of Corrections
PO Box 863
Trenton, NJ 08625-0863
or via e-mail at: ARU@doc.nj.gov.

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1, N.J.A.C. 10A:5, Close Custody Units, was scheduled to expire on March 25, 2015. 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 September 21, 2015. The Department has reviewed these rules and, with the exception of the amendments proposed, 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.

Several amendments are proposed throughout the chapter to reorganize rule provisions, to correct minor errors in grammar, to improve sentence structure, for purposes of clarification, to replace certain terms with more appropriate or accurate words, to reflect current Departmental policy, practice, and procedure, to set forth current titles and unit names, and/or to add citations or cross-references, where indicated, for clarity and ease of use. The relocation and consolidation of rules within the chapter and two new processes are proposed to enhance due process for inmates assigned in the M.C.U. The relocation of rules condense the M.C.U. hearing and review processes while the new processes provide for an initial placement hearing and appeal of M.C.U. Hearing Officer decisions.

Subchapter 1 sets forth the general provisions and definitions and two new terms are proposed for N.J.A.C. 10A:5-1.3, which include a new function, the Management Control Unit (M.C.U.) Hearing Officer, and a new process, the initial placement hearing, in connection with changes made in the M.C.U. Both the new function and new process are intended to provide an additional layer of review with regard to M.C.U. placement.

Subchapter 2 sets forth provisions for the Management Control Unit (M.C.U.) and the proposed amendments reflect the Department's desire to enhance due process for inmates assigned to the M.C.U. by adding neutral employees to the decision-making and review processes; expanding the evidence considered at hearings; increasing the number of hearings; and adding flexibility in the timing of hearings and reviews.

At N.J.A.C. 10A:5-2.1(a)6 and 7.1(f) the job title of Director of Custody Operations has been updated to a Correction Major to coincide with current NJDOC operations and job titles.

The composition of the Management Control Unit Review Committee (M.C.U.R.C.) at N.J.A.C. 10A:5-2.2(a) is proposed to be amended as follows: replace the Associate Administrator or Superintendent with a representative from New Jersey State Prison Administration and replace the person designated as the Custody, Supervisor of the M.C.U. with a representative from Custody. A chairperson permanently assigned to the DOC Central Office has also been added to the M.C.U.R.C. A non-voting recorder is proposed to be added to the M.C.U.R.C. at N.J.A.C. 10A:5-2.2(a)6. Assignment of committee members (except the chairperson) by the Administrator or designee is proposed in N.J.A.C. 10A:5-2.2(b) and the fact that they may be employees of New Jersey State Prison is proposed to be added in N.J.A.C. 10A:5-2.2(c).

The frequency of M.C.U.R.C. meetings is proposed to be modified from "at least once weekly when necessary" to "as needed" at N.J.A.C. 10A:5-2.3(a) and inmate progress reviews have been changed from "at least every three months" to "at least every 90 days" in N.J.A.C. 10A:5-2.3(a)2.

An amendment at N.J.A.C. 10A:5-2.3(a)3 through 5 is proposed in order to set forth the

additional review criteria that have been added to the M.C.U.R.C. responsibilities as follows: reviewing all circumstances, custody reports, professional reports, recommendations, inmate statements, and any other relevant evidence related to inmates placed in, or referred for placement, in M.C.U.; reviewing all circumstances, custody reports, professional reports, recommendations, inmate statements, and any other relevant evidence related to phase changes; and any other functions deemed necessary to ensure the safe, secure, and effective running of the M.C.U.

Portions of proposed amendments to N.J.A.C. 10A:5-2.6 relocates, with amendments, text from existing rules appearing at N.J.A.C. 10A:5-2.10 and 11, which are now proposed for repeal.

The heading of N.J.A.C. 10A:5-2.6 is proposed for amendment to replace "hearings" with "reviews" as the hearing process is being relocated to N.J.A.C. 10A:5-2.8. Language pertaining to the frequency of formal review of the need for continued M.C.U. assignment and release therefrom, is proposed to be relocated from N.J.A.C. 10A:5-2.10(a) and 2.11(a) to 2.6(a), with an amendment to the timing of formal review from "a minimum of every three months" and "at least annually," respectively, to a single review period of "at least every 90 days" to enable sooner reviews when appropriate.

Language pertaining to M.C.U.R.C. hearings at N.J.A.C. 10A:5-2.10(a), regarding continued need for M.C.U., and 2.11(a), regarding release from M.C.U., is proposed to be relocated to N.J.A.C. 10A:5-2.6(a), which is amended to add that inmates in M.C.U. may be considered for phase change or other related actions during M.C.U. placement reviews to provide added flexibility in the placement review process. N.J.A.C. 10A:5-2.6(a) is further proposed for amendment to add that when an inmate is placed in the M.C.U. by the M.C.U. Hearing Officer, a preliminary determination shall be made by the M.C.U.R.C. as to when the need for the M.C.U. program is to be reviewed.

The written notification provided to inmates when admitted to the M.C.U. described in recodified N.J.A.C. 10A:5-2.6(w) indicates that the next formal M.C.U. placement review will be held in three months. This is proposed for amendment to remove the phrase "to the inmate being admitted or retained in the M.C.U." and to replace timing of the next formal review from being "held in three months" to "held within 90 days" so that more frequent reviews can be conducted when practicable.

N.J.A.C. 10A:5-2.6(b), describing Form L.C. 36 Criteria Record Sheet contents, is proposed for deletion. The process for inmate notification of M.C.U.R.C. hearings is proposed to be relocated from N.J.A.C. 10A:5-2.6(a) to new N.J.A.C. 10A:5-2.6(b) and the fact that inmates can request "M.C.U.R.C. approved" inmate paralegal assistance at the hearing to act as a counsel substitute is proposed to be added to N.J.A.C. 10A:5-2.6(c).

The timeframe appearing in N.J.A.C. 10A:5-2.6(f) is proposed for deletion with the consolidation of M.C.U. hearings. Proposed new N.J.A.C. 10A:5-2.6(f) adds a written record of reviews that must be maintained by the M.C.U.R.C. in a separate file, as well as be made part of the inmate's case folder and that M.C.U.R.C. reports are to be signed by all members.

Lists of items that may be considered during M.C.U.R.C. reviews at N.J.A.C. 10A:5-2.10(e) and M.C.U.R.C. hearings at N.J.A.C. 10A:5-2.11(b) are proposed for relocation as N.J.A.C. 10A:5-2.6(h) and (i)1i, respectively. A proposed amendment to the hearing evidence regarding remaining free from prohibited acts at N.J.A.C. 10A:5-2.6(i)1i would remove the descriptor "preceded by an asterisk for the program year" from prohibited acts. N.J.A.C. 10A:5-2.6(g) is proposed for recodification as N.J.A.C. 10A:5-2.6(i) with a proposed amendment to remove the phrase "or unless the inmate refuses to appear" as this language is misplaced. In addition, language pertaining to the burden of proof, relocated from N.J.A.C. 10A:5-2.11(b) to 2.6(i)1, adds a requirement that the

inmate has agreed to reaffirm the obligation to adhere to the rules and regulations for inmate behavior, as described in the handbook on discipline and correctional facility inmate handbooks.

The process for appeals of M.C.U.R.C. decisions is outlined in N.J.A.C. 10A:5-2.7, which is proposed for amendment to further enhance due process for inmates in M.C.U. by the Commissioner designating a neutral employee to receive appeals instead of the facility Administrator to avoid any appearance of bias.

The heading of N.J.A.C. 10A:5-2.8 is proposed for amendment to "Prehearing, initial placement hearing, and appeal of initial placement hearing" to include the entire process now covered by the section. N.J.A.C. 10A:5-2.8(a) is proposed for amendment to require the chairperson to determine if there is reasonable evidence to hold the inmate in the M.C.U., by the next business day, when an inmate is placed in prehearing M.C.U. and to communicate this determination to the facility Administrator within 24 hours. A new placement hearing process at proposed new N.J.A.C. 10A:5-2.8(b) will be conducted by the new functional role, the M.C.U. Hearing Officer. The written notice in N.J.A.C. 10A:5-2.6(a) and (f) is proposed for consolidation as N.J.A.C. 10A:5-2.8(b).

New N.J.A.C. 10A:5-2.10, Review of inmate status in the Management Control Unit (M.C.U.), is proposed to provide an additional review and approval by the Deputy Commissioner or Assistant Commissioner of Operations for inmates assigned to M.C.U. for more than two years.

Proposed amendments to N.J.A.C. 10A:5-2.30, Program monitoring, review, and modification, focus on evaluating the program. Should the M.C.U.R.C. or its members identify a need to deviate from the M.C.U. program as outlined in Subchapter 2, a proposed amendment regarding requests to deviate from the subchapter requirements would allow such request to be submitted through the chairperson, and a proposed amendment would allow receipt of the request by the Deputy Commissioner.

Subchapter 3 sets forth requirements regarding administrative segregation and amendments are proposed to N.J.A.C. 10A:5-3.2(b) and (e), wherein the job title of Captain will be updated to Correction Major to coincide with current NJDOC job titles.

Subchapter 4 is reserved.

Subchapter 5 sets forth requirements regarding protective custody. An amendment is proposed at N.J.A.C. 10A:5-5.2(i) to remove the words "or in a Protective Custody Unit" since only inmates in involuntary protective custody receive a hearing. The words "Division of Operations Director" are proposed to be removed from N.J.A.C. 10A:5-5.5(a) as it is the Institutional Classification Committee (I.C.C.) and the Administrator or his or her designee that determines when an inmate will be released from protective custody. The word "involuntary" is proposed to be deleted from N.J.A.C. 10A:5-5.5(c) since this subsection applies to all inmates in protective custody, not just those in involuntary protective custody. The I.C.C. does not monitor the withdrawal of personal items or activities, therefore, N.J.A.C. 10A:5-5.19(c) is proposed to be deleted.

Subchapter 6 is reserved.

Subchapter 7 sets forth the requirements for placing an inmate in temporary closed custody.

As the Department of Corrections (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 use of close custody units has proven useful in the maintenance of discipline, safety, and

the orderly operation of correctional facilities in the New Jersey Department of Corrections and will continue to assist administrators in the management of the inmate population. The rules proposed for readoption with amendments, repeals, and a new rule provide guidance to departmental staff by clarifying existing rules and adding to the composition and responsibilities of the Management Control Unit Review Committee (M.C.U.R.C.). The rules proposed for readoption with amendments, repeals and a new rule further enhance due process for inmates, include an additional layer of review, and add an enhanced internal appeals process with respect to inmate placement in the M.C.U.

Economic Impact

Additional funding is not necessary to implement the requirements of the rules proposed for readoption with amendments, repeals, and a new rule. The cost of meeting and maintaining the requirements of the rules proposed for readoption with amendments, repeals, and a new rule 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, repeals, and a new rule 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, repeals, and a new rule 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, repeals, and a new rule will cause neither the generation nor the loss of any jobs.

Agriculture Industry Impact

The rules proposed for readoption with amendments, repeals, and a new rule 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, repeals, and a new rule 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, repeals, and a new rule 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, repeals, and a new rule shall 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, repeals, and a new rule concern Close Custody Units 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, repeals, and a new rule 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, repeals, and a new rule concern Close Custody Units 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:5.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10A:5-2.10 and 2.11.

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

SUBCHAPTER 1. GENERAL PROVISIONS

10A:5-1.3 Definitions

...

“Initial placement hearing” means the initial hearing conducted by the M.C.U. Hearing Officer to determine the suitability of the inmate’s initial placement into the MCU.

...

“M.C.U. Hearing Officer” or “Hearing Officer” means the staff member, with the rank of Assistant Superintendent or above, designated by the Deputy Commissioner or Assistant Commissioner of Operations to hear and preside over M.C.U. initial placement hearings.

...

SUBCHAPTER 2. MANAGEMENT CONTROL UNIT (M.C.U.)

10A:5-2.1 Referrals for placement in the Management Control Unit (M.C.U.)

(a) Recommendations for placement of inmates in the M.C.U. may be submitted to the Management Control Unit Review Committee (M.C.U.R.C.) by:

1. - 5. (No change.)

[6. The Director of Custody Operations.]

6. A Correction Major.

10A:5-2.2 Composition of the Management Control Unit Review Committee (M.C.U.R.C.)

(a) The M.C.U.R.C. shall be composed of **the following five regular voting members and one recorder:**

[1. The Associate Administrator or Superintendent;]

1. A representative from New Jersey State Prison Administration;

2. A representative from the Education or Social Services Department [and a];

3. A representative from Mental Health Services; [and]

[3. The person designated as the Custody Supervisor of the M.C.U.]

4. A representative from Custody;

5. A Chairperson, who shall be an employee permanently assigned to Central Office,

designated by either the Deputy Commissioner or designee or the Assistant Commissioner of Operations or designee; and

6. A non-voting recorder who shall maintain records, minutes, and reports of the Committee.

(b) The Administrator or designee shall assign the Committee members with the exception of the chairperson as established in (a) above.

(c) The Committee members may include employees of New Jersey State Prison.

10A:5-2.3 Responsibilities of the Management Control Unit Review Committee (M.C.U.R.C.)

(a) The M.C.U.R.C. shall meet [at least once a week, when necessary, to deliberate on matters related to] as needed to carry out its responsibilities. The M.C.U.R.C. shall be responsible for:

- 1. Hearing the cases of inmates referred for placement in M.C.U.; [and]**
- 2. Reviewing the progress of each inmate placed in M.C.U. at least every [three months] 90 days to determine whether continued placement in the Unit is appropriate[.];**
- 3. Reviewing all circumstances, custody reports, professional reports, recommendations, inmate statements, and any other relevant evidence related to inmates placed in, or referred for placement, in M.C.U.;**
- 4. Reviewing all circumstances, custody reports, professional reports, recommendations, inmate statements, and any other relevant evidence related to phase changes; and**
- 5. Any other functions deemed necessary to ensure the safe, secure, and effective running of the M.C.U.**

10A:5-2.6 Procedures for the Management Control Unit Review Committee (M.C.U.R.C.)
[hearings] **reviews**

(a) When an inmate is placed in the M.C.U. by the M.C.U. Hearing Officer, a preliminary determination shall also be made by the M.C.U.R.C. as to when the need for the M.C.U. program shall be reviewed. A formal review of each inmate in the M.C.U. shall be made at least every 90 days. During the reviews, inmates in M.C.U. may be considered for release, phase change, or any other action deemed appropriate as a result of the review.

[(a)] (b) [An inmate being considered for assignment to the M.C.U.] Prior to an M.C.U.R.C. hearing, the inmate shall be given written notice, utilizing Form L.C. 36 Criteria Record Sheet, at least 24 hours prior to appearing before the M.C.U.R.C. The staff member delivering the notice shall sign the form and indicate the time and date of delivery.

[(b) Form L.C. 36 Criteria Record Sheet shall:

- 1. Delineate the criteria, which will be utilized in determining the inmate's suitability for the M.C.U.;**
- 2. Provide an outline of the major factors in the particular inmate's case history;**
- 3. Contain concise statements of the factual basis, not merely conclusions, on which the recommendation of M.C.U. placement is based; and**
- 4. Not contain information deemed confidential.]**

(c) The inmate shall also be notified that he or she may obtain the help of an inmate paralegal to act as a counsel substitute approved by the M.C.U.R.C. to assist in the adequate collection and presentation of the facts in the inmate's case and to be present at the hearing as a spokesperson (see N.J.A.C. 10A:6-2.12 and 2.14).

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

[(f) Unless there are exceptional circumstances, unavoidable delays or reasonable postponements, inmates shall be seen by the M.C.U.R.C. within 10 business days of being notified that they are being considered for placement in the M.C.U.]

(f) A written record shall be maintained by the M.C.U.R.C. of all reviews of inmates in the M.C.U. This record shall be kept in a separate file in addition to being made a permanent part of the inmate's case folder. All M.C.U.R.C. reports shall be signed by all M.C.U.R.C. members.

(g) Any member of the M.C.U.R.C. may request a review for an inmate in the M.C.U. earlier than previously scheduled.

(h) At each review, the M.C.U.R.C. shall review the information upon which the decision was based to assign the inmate to the M.C.U. Such information shall include:

- 1. Disciplinary reports;**
- 2. Program participation, such as, but not limited to, education, counseling, recreational activities; and**
- 3. Records of the inmate's behavior and attitude while in the M.C.U., such as custody and professional staff reports that must be periodically filed, describing pertinent observations, both positive and negative, of the inmate's behavior and attitude while in the M.C.U.**

[(g)] (i) At the [meeting] review with the M.C.U.R.C., the inmate shall be allowed to appear in person and to testify, unless the inmate's appearance would pose a serious threat to the safety or security of the correctional facility[, or the M.C.U.R.C.], or unless the inmate refuses to appear.] In those cases where an inmate is not allowed to appear in person, the inmate shall be permitted to present the case through a counsel substitute and through submission of such written materials as the inmate believes appropriate.

1. At this review, the inmate has the initial burden of demonstrating that the inmate has:

- i. Participated in available jobs and educational and recreational programs;**
- ii. Complied with the criteria detailed by the M.C.U.R.C. at earlier hearings or reviews;**
- iii. Remained free from prohibited acts; and**
- iv. Agreed to reaffirm the obligation to adhere to the rules and regulations for inmate behavior, as described in the handbook on discipline for inmates and correctional facility inmate handbooks.**

2. If the inmate demonstrates participation and compliance in accordance with (i)1 above, the inmate will be considered for release from the M.C.U. or for a phase change. The inmate will be released unless the Department of Corrections can demonstrate through substantial evidence, including behavior, correctional facility adjustment, and disciplinary history that the inmate continues to pose an identifiable threat:

- i. To the safety of others;**
- ii. Of damage to, or destruction of property; or**
- iii. Of interrupting the secure and/or orderly operation of a State correctional facility.**

[(h)] (j) (No change in text.)

[(i)] (k) If the [proposed M.C.U. placement is] M.C.U.R.C. considerations are based in part on information from a confidential informant, the inmate shall be provided with a concise statement of facts establishing that the informant is credible or his or her information is reliable and the

informant's statement (either in writing or as reported) is in language that is factual, not conclusive and is based upon the informant's personal knowledge of the matters contained in his or her statement.

Recodify existing (j) - (t) as **(I) - (v)** (No change in text.)

[(u)] **(w)** In the written notice of decision[to the inmate being admitted or retained in M.C.U.], the M.C.U.R.C. shall point out the elements of the inmate's behavior or attitude which are deemed to be unsatisfactory and shall advise the inmate that the next formal M.C.U.R.C. review on the inmate's case will be held [in three months] **within 90 days**.

10A:5-2.7 Appeal of Management Control Unit Review Committee (M.C.U.R.C.) decisions

(a) At the time the inmate is provided with the M.C.U.R.C.'s decision, the inmate shall be advised of the opportunity to [have the Administrator or designee review the M.C.U.R.C. decision.] **appeal the decision to an employee designated by the Commissioner to receive such appeals**. The inmate shall have [one calendar week] **seven business days** to submit a letter of appeal. The [Administrator or designee] **employee receiving such appeals** may approve or modify any M.C.U.R.C. decision as deemed appropriate. The [Administrator or designee] **employee receiving such appeals** may also order further hearings where appropriate.

(b) During the [Administrator's] **employee's** review, the following factors shall be considered:

1. - 3. (No change.)

(c) The [Administrator's] **employee's** decision shall be forwarded to the inmate in writing within seven business days following receipt of the appeal.

10A:5-2.8 [Use of] Prehearing, [Management Control Unit prior to the Management Control Unit Review Committee (M.C.U.R.C.) meeting] **initial placement hearing, and appeal of initial placement hearing**

(a) The inmate may be placed in Prehearing M.C.U. by order of [the] **an** Administrator[, Associate Administrator] or [Assistant Superintendent] **designee** utilizing Form 141--I Authorization for Prehearing M.C.U. when there is reasonable evidence that, if the inmate remains in general population, there is an immediate threat: [1. To] **to** the safety of others; [2. Of] **of** damage to or destruction of property; or [3. Of] **of** interrupting the safe, secure, and orderly operation of the correctional facility.

[(b)] **1.** The inmate shall be entitled to [a hearing] **an initial placement hearing** within 10 business days following placement into Prehearing M.C.U.

Recodify existing (c) - (e) as **2. – 4.** (No change in text.)

[(f)] **5.** Additional copies of completed Form 141--I may be kept on file, for recordkeeping purposes, in any areas designated by the Administrator and [the Director of Custody Operations] **a Correction Major**.

6. In all cases where an inmate is placed in Prehearing M.C.U., the chairperson of the M.C.U.R.C. shall review FORM 141 – I, which shall be forwarded to the chairperson by the next full business day of placement into the Prehearing M.C.U., and determine, based on the criteria set forth in (a) above, if there is reasonable evidence to hold the inmate in the M.C.U. The chairperson shall then communicate their determination to the Administrator or designee within 24 hours. The chairperson shall be granted access to whatever evidence the chairperson deems necessary to make a recommendation.

(b) When an inmate has been referred for placement into the M.C.U. in accordance with this section an initial placement hearing shall be conducted within 10 business days of the first full

day of the inmate's arrival to New Jersey State Prison unless there are exceptional circumstances, unavoidable delays, or reasonable postponements.

1. The initial placement hearing shall be conducted by an M.C.U. Hearing Officer. This person shall hold the rank of Assistant Superintendent or above and be designated by the Deputy Commissioner or Assistant Commissioner of Operations to hear and preside over the M.C.U. initial placement hearings.

2. An inmate being considered for placement in M.C.U. or placed in Prehearing M.C.U. shall be given written notice, utilizing Form L.C. 36 Criteria Record Sheet, at least 24 hours prior to the placement hearing.

3. A representative of the administration of either the sending facility or New Jersey State Prison shall make a presentation in support of placement to the M.C.U.

4. The M.C.U. Hearing Officer shall have the discretion to keep the hearing within reasonable limits and to refuse to permit the collection and presentation of evidence that is not necessary for an adequate understanding of the case. The M.C.U. Hearing Officer shall exercise control over all presentations to prevent lack of relevancy, harassment, abuse, or repetitiveness and to ensure that the hearing does not develop into an adversarial proceeding.

5. At the hearing the inmate shall be allowed to appear in person and to testify, unless the inmate's appearance would pose a serious threat to the safety or security of the correctional facility or the M.C.U. hearing. In those cases where an inmate is not allowed to appear in person, the inmate shall be permitted to present the case through an inmate counsel substitute approved by the M.C.U.R.C, and through submission of such written materials as the inmate believes appropriate.

6. At the hearing, the inmate shall be informed of all adverse information bearing on the case, with the exception of information designated confidential by the M.C.U. Hearing Officer.

7. The administration shall present their case first, followed by the inmate. The administration representative may question witnesses directly. The inmate may not directly question witnesses, including witnesses called by the inmate. The inmate however, may submit questions through their representative and/or the M.C.U. Hearing Officer. The M.C.U. Hearing Officer may exclude any questions deemed irrelevant or harassing in nature.

8. If the proposed M.C.U. placement is based in part on information from a confidential informant, the inmate shall be provided with a concise statement of facts establishing that the informant is credible or his or her information is reliable and the informant's statement (either in writing or as reported) is in language that is factual, not conclusive, and is based upon the informant's personal knowledge of the matters contained in his or her statement.

9. When information utilized by the M.C.U. Hearing Officer is deemed confidential and cannot be fully disclosed to the inmate, the Hearing Officer shall direct the inmate and the inmate's representative to leave the hearing while this information is being presented or discussed. Whenever practical, the inmate shall be informed of the confidential information in accordance with the provisions of this section.

10. The inmate shall be permitted to present documentary evidence related to the inmate's case. The inmate shall also be permitted to call witnesses on the inmate's own behalf when permitting the inmate to do so will not risk the maintenance of security or the orderly operation of the correctional facility. The M.C.U. Hearing Officer shall have the discretion, however, to keep the hearing within reasonable limits.

11. The M.C.U. Hearing Officer shall call those witnesses deemed to be reasonably available and whose testimony is necessary for a proper understanding of the circumstances of the particular case. Repetitive witnesses need not be called. For purposes of this paragraph, "repetitive witnesses" are witnesses who provide the same account as a previous witness(es). "Repetitive witnesses" are not intended to refer to the calling of a witness(es) who previously provided written documentary evidence. The M.C.U. Hearing Officer shall have the discretion to refuse to call witnesses that may create a risk of reprisal. Unavailable witnesses may be asked to submit written statements. Witnesses requested by the inmate who are called should be questioned by the M.C.U. Hearing Officer or the counsel substitute. Inmates without a counsel substitute may request that certain questions be directed by the M.C.U. Hearing Officer to any witnesses.

12. The M.C.U. Hearing Officer shall exercise control over all presentations to exclude irrelevant information and to prevent harassment, abuse, or repetition. If the M.C.U. Hearing Officer shall refuse to call one or more witnesses, the reasons for each such refusal shall be separately specified on the decision form.

13. During the formal review with the inmate, the M.C.U. Hearing Officer may give guidance to the inmate with respect to the reason for the rules and internal management procedures of the correctional facility.

14. Prior to rendering a decision to place an inmate in the M.C.U., the M.C.U. Hearing Officer shall consider alternatives to M.C.U. placement as a means of addressing the correctional facility concerns related to the inmate. These alternatives shall include, but not be limited to, transfer to another correctional facility, reduction in privileges, or transfer to another housing unit in general population.

15. The following criteria shall apply to the decision to place an inmate in the M.C.U. Whether there is reasonable evidence that, if the inmate remains in general population, there is an immediate threat: to the safety of others; of damage to or destruction of property; or of interrupting the safe, secure, and orderly operation of the correctional facility.

16. The M.C.U. Hearing Officer shall apply the following factors when making a decision:

- i. Disciplinary records;
- ii. Past criminal offences;
- iii. Previous institutionalizations, including records of serious misbehavior;
- iv. Reports by professional staff;
- v. Reports indicating current criminal behavior;
- vi. Evidence of an attitude that indicates an unwillingness to follow rules or obey orders;
- vii. Inability to maintain a satisfactory work record;
- viii. Unsatisfactory progress in treatment or rehabilitative programs; and/or
- ix. Evidence of an inability to house with other inmates in a non-disruptive manner.

17. Within seven business days, the M.C.U. Hearing Officer shall provide a written notice of decision to the inmate advising the inmate of the reason for the decision and a summary of the evidence relied upon. The decision of the M.C.U. Hearing Officer to place an inmate in the M.C.U. shall be based on the information contained in the record. In the event a record contains information received from a confidential informant, the M.C.U. Hearing Officer shall provide a summary of facts upon which the M.C.U. Hearing Officer concluded

that:

- i. The informant is credible and that his or her information is reliable;
- ii. The informant's statement (either in writing or as reported) is in language that is factual rather than a conclusion; and
- iii. The informant's statement and information is based on his or her personal knowledge of the matters.

18. A non-voting recorder shall be present for the initial placement hearing to make a record of the proceedings. The recorder shall place all proceedings in the inmate's M.C.U. and classification folders as appropriate.

(c) At the time the inmate is provided with the M.C.U. Hearing Officer's decision, the inmate shall be advised of the opportunity to appeal the decision to an employee designated by the Commissioner to receive such appeals. The inmate shall have seven business days to submit a letter of appeal. The employee receiving such appeals may approve or modify any M.C.U.R.C. decision as deemed appropriate. The employee receiving such appeals may also order further hearings where appropriate.

- 1. During the employee's review, the following factors shall be considered:
 - i. Whether there was compliance with N.J.A.C. 10A:5-2.6 and this section;
 - ii. Whether the decision of the M.C.U. Hearing Officer was based on substantial evidence; and
 - iii. Whether the decision rendered was appropriate to the inmate's case.
- 2. The employee's decision shall be forwarded to the inmate in writing within seven business days following receipt of the appeal.

10A:5-2.10 Review of inmate status in the Management Control Unit (M.C.U.)

(a) In every case where an inmate has been confined to the M.C.U. for a period of two consecutive years, the review procedure set forth in N.J.A.C. 10A:5-2.6 shall require the approval of the Deputy Commissioner or Assistant Commissioner of Operations for continued confinement in the M.C.U.

(b) The Deputy Commissioner's or Assistant Commissioner of Operations' approval for continued placement in the M.C.U. shall be required for each subsequent review after two consecutive years in M.C.U.

10A:5-2.11 (Reserved)

10A:5-2.30 Program monitoring, review, and modification

The M.C.U.R.C. shall continuously monitor and review all aspects of the M.C.U. When the M.C.U.R.C. desires to make any significant deviation from the M.C.U. Program as delineated in this subchapter, a request shall be submitted in writing through the Administrator **or the Chairperson** to the Assistant Commissioner, Division of Operations **or the Deputy Commissioner**.

SUBCHAPTER 3. ADMINISTRATIVE SEGREGATION

10A:5-3.2 Special Administrative Segregation Review Committee (S.A.S.R.C.)

(a) (No change.)

(b) The Director of the Division of Operations shall designate voting members who shall be an Associate [Administrator/Assistant Superintendent/Captain] **Administrator/Assistant**

Superintendent/Correction Major or designee to serve on the S.A.S.R.C. The S.A.S.R.C. shall be composed of:

1. - 3. (No change.)
- (c) – (d) (No change.)
- (e) The Director may designate a supervisory custody staff member of the rank of [Captain or above] **Correction Major** to attend each meeting of the S.A.S.R.C., who shall have voting power. In the event that a custody staff member of the rank of [Captain or above] **Correction Major** is unavailable, a custody staff member of the rank of Lieutenant who shall have voting power may be designated to attend.
- (f) - (p) (No change.)

SUBCHAPTER 5. PROTECTIVE CUSTODY

10A:5-5.2 Hearing procedure for involuntary placement in a Protective Custody Unit

- (a) – (f) (No change.)
- (g) Illiterate inmates or inmates otherwise unable to adequately collect and present the facts shall receive the assistance of a counsel substitute assigned by the Disciplinary Hearing [Officer/Adjustment Committee] **Officer** or Administrator or designee. An interpreter shall be utilized, if needed, at the discretion of the Disciplinary Hearing [Officer/Adjustment Committee] **Officer**.
- (h) The Disciplinary Hearing [Officer/Adjustment Committee] **Officer** shall have the discretion to keep the hearing within reasonable limits and to refuse to permit the collection and presentation of evidence which is not necessary for an adequate understanding of the case. The Disciplinary Hearing [Officer/Adjustment Committee] **Officer** may order further investigation and reports where deemed necessary and shall exercise control over all presentations to prevent lack of relevancy, harassment, abuse or repetitiveness and to ensure that the hearing does not develop into an adversarial proceeding.
- (i) Inmates placed involuntarily in Prehearing Protective Custody [or in a Protective Custody Unit] shall receive a hearing within 20 business days after receipt of the notice, unless there are exceptional circumstances, unavoidable delays or reasonable postponements.
- (j) The inmate shall be permitted to be present at the hearing except during the necessary deliberations of the Disciplinary Hearing Officer [or Adjustment Committee] and except in instances where the security or order of the facility would be jeopardized. Reasons for excluding an inmate from the hearing shall be documented in the record. At the hearing, the inmate shall be informed of all information related to the inmate's case, with the exception of information designated confidential. In the event the inmate is not permitted to be present at the hearing, the inmate shall be notified of information related to the case in accordance with (l) below.
- (k) When reviewing confidential informant information, the Disciplinary Hearing [Officer/Adjustment Committee] **Officer** shall inquire into the reliability of the informant and the information, and shall utilize such information only after satisfied that it is reasonably reliable. Whenever informant information is used, the inmate shall be informed of the general character of the information, if practicable. The details of the informant information shall be withheld on grounds of confidentiality.
 1. In any case in which the Disciplinary Hearing Officer's [or Adjustment Committee's] decision is based on evidence that includes confidential information, adjudication shall contain:

i. A concise summary of the facts on which the Disciplinary Hearing Officer [or Adjustment Committee] concluded that the informant was credible or his or her information reliable; and

ii. (No change.)

2. The Disciplinary Hearing Officer [or Adjustment Committee] is not permitted to disclose the identity of the informant.

(l) Within 10 business days of the hearing, the Disciplinary Hearing [Officer/Adjustment Committee] **Officer** shall provide a written notice of decision and a summary of the evidence relied upon.

10A:5-5.3 Appeal procedures for an involuntary Protective Custody placement

(a) – (c) (No change.)

(d) Within 10 business days of receipt of the appeal, the Administrator or designee may:

1. Approve the Disciplinary Hearing [Officer/Adjustment Committee's] **Officer's** decision;
2. Modify the Disciplinary Hearing [Officer/Adjustment Committee's] **Officer's** decision;

or

3. (No change.)

(e) (No change.)

10A:5-5.5 Release of inmates in Protective Custody Units

(a) An inmate who has voluntarily signed himself or herself into Protective Custody who wishes to be released from Protective Custody may complete Form CUS-132 Request For Release From Protective Custody and submit this form to the appropriate Custody Supervisor. In order to approve such a requested release, the Institutional Classification Committee (I.C.C.), the Administrator or designee [and the Division of Operations Director or designee] must be satisfied that there is no known danger to the inmate's well-being and no known threat to the safe, secure or orderly operation of the correctional facility. Should the request for release be denied, the inmate may request in writing to be deemed an involuntary placement into Protective Custody and the applicable provisions of this subchapter shall apply.

(b) (No change.)

(c) Inmates released from [involuntary] Protective Custody shall, when appropriate, be referred to the CRAF Intake Unit for assignment to a suitable correctional facility.

10A:5-5.19 Withdrawal of personal items or activities

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

[(c) The Institutional Classification Committee (I.C.C.) shall review any such restriction within one week. Any continued restriction shall be permitted only with the written authorization of the I.C.C.]

[(d)] (c) (No change in text.)

SUBCHAPTER 7. TEMPORARY CLOSE CUSTODY

10A:5-7.1 Placement in temporary close custody

(a) – (e) (No change.)

(f) In consideration of the reason for an inmate's placement in temporary close custody, [the Director of Custody Operations] **a Correction Major** or designee shall determine the personal property and other services, such as, but not limited to, visits and telephone calls, which the inmate may be afforded while in temporary close custody.

(g) (No change.)