

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 Recodification with Amendments: N.J.A.C. 10A:4-10.1 as 10A:5-6.1 and 10A:5-2.28 as 1.3

Proposed New Rules: N.J.A.C. 10A:5-2.11, 4, 8, 9, 10.1

Proposed Amendments: N.J.A.C. 10A:5-1.1, 1.3, 2.1, 2.5, 2.6, 2.8, 2.9, 5.1, 5.2, 5.3, 5.4, 5.5, 5.22, and 7.1

Proposed Repeals: N.J.A.C. 10A:4-10.2 through 10.18 and 10A:5-1.2, 1.4, 2.12 through 2.27, 2.29, 2.31, 3, 5.6 through 5.21, 5.23, and 5.24

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

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

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

Proposal Number: PRN 2020-061.

Submit written comments by September 4, 2020, to:

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The agency proposal follows:

Summary

The proposed amendments, repeals, new rules, and recodifications are proposed to promulgate and incorporate some of the requirements set forth in the Isolated Confinement Restriction Act, N.J.S.A. 30:4-82.5 through 11 (the Act), effective August 1, 2020. This complex legislation affects sanctions, inmate housing arrangements, and custody status, all of which may be associated with inmate discipline for committing one or more of the prohibited acts at N.J.A.C. 10A:4-4.1. Because of the far-reaching changes to the Department of Correction's (Department) rules required by the Act, the Department has determined to start with Chapter 5, and then, in later rule actions, propose other new rules, repeals, and amendments. Inmate discipline, housing sanctions for committing prohibited acts, classification, custody status, and the severity of offense scale are all inter-related. When changes are made to one of these areas, they must be reflected or balanced across all of the areas mentioned.

In this rule action, the Department proposes to amend rules for close custody units to effectuate greater inmate rehabilitation and less punitive disciplinary housing arrangements, as required by the Act. In addition, technical changes have also been included to reflect current operations and/or conditions.

At N.J.A.C. 10A:5-1.1, the Department proposes to delete paragraphs (a)1, 2, 3, and 5 pertaining to the purpose of the subchapter that is of a process and procedural nature as it is better suited to internal Departmental documentation. At N.J.A.C. 10A:5-1.1(a)4, the Department proposes to include the names of the close custody units - Pre-Hearing Disciplinary Housing (P.H.D.H.), Management Control Unit (M.C.U.) (already in existing rule), Restorative Housing Unit (R.H.U.), Adjustment Unit (A.U.), Protective Custody Unit (P.C.U.), and Temporary Administrative Housing Unit. The Department proposes to eliminate Administrative Close Supervision, as it no longer exists and to replace Temporary Close Custody with the Investigative Housing Unit (I.H.U.).

The Department proposes to repeal N.J.A.C. 10A:5-1.2, Scope, as Chapter 5 is applicable to the Department of Corrections, its staff, and inmates, not just the Division of Operations and it is not necessary to state that within the chapter.

At recodified N.J.A.C. 10A:5-1.2, Definitions, new definitions are proposed for Adjustment Unit, emergency confinement, Investigative Housing Unit, Restorative Housing Unit, and member of vulnerable population to reflect restructuring of the close custody units. The Department proposes to delete the terms "Adjustment Committee" and "Administrative Segregation Level Program." The definition of "Special Administrative Segregation Review Committee" is proposed to delete "Segregation" and replace the reference to "Administrative Close Supervision Units" with "Restorative Housing Unit." The terms "initial placement hearing" and "temporary close custody" are proposed for deletion.

As numerous sections in Chapter 5 contain the same, or very similar, rules for each of the close custody units, the Department proposes to repeal N.J.A.C. 10A:5-2.12 through 2.29 and 5.6 through 5.21 and replace those sections with new N.J.A.C. 10A:5-1.3. At the same time, the Depart proposes to make consistent amendments across the close custody units environmental conditions/considerations, whenever possible. For example, the rulemaking includes increasing showers in all close custody units to three times per week and maintaining the same conditions across the close custody units for ventilation, sanitation, food, correspondence, exercise, recreation, etc.

In addition, the Department proposes further consolidation by recodifying N.J.A.C. 10A:5-2.31 and 5.22 as 2.11 and 5.6, respectively, and making these sections applicable to all close custody units.

The Department proposes to repeal N.J.A.C. 10A:5-1.4, Forms, as the forms are for internal Departmental use only and are better suited for internal documentation and management procedures. Given the proposed repeal of N.J.A.C. 10A:5-1.4, Forms, the Department further proposes to generalize all references to form numbers and names at N.J.A.C. 10A:5-2.8(a), (a)3 through 6, and (b)2, 5.1(b), and 5.2(a) and (c) through (k).

The Department proposes to delete N.J.A.C. 10A:5-2.8(a)3 and 4 and the second sentence of paragraph (a)4 as this level of detail is better suited to internal management procedures and is not necessary in administrative rules. N.J.A.C. 10A:5-2.8(b)4, 5, and 6, 10, 11, 12, 13, 14, and 16, duplicate language found at N.J.A.C. 10A:5-2.6(e), (i), (j), (n), (o), (p), (q), and (r) and 2.8(b)2 and 3, and describes processes that are better suited to internal management procedures, therefore, the Department proposes to delete N.J.A.C. 10A:5-2.8(b)4, 5, and 6, 10, 11, 12, 13, 14, and 16. At recodified N.J.A.C. 10A:5-2.8(b), the Department proposes to modify the language to reflect the fact that criteria used to initially place inmates in the M.C.U. are the same as those used for the prehearing M.C.U.

The Department proposes to repeal N.J.A.C. 10A:5-5.21, as use of inmate records in close custody units is better suited to internal policies and management procedures, and to delete N.J.A.C. 10A:5-5.2(b), as it conflicts with N.J.A.C. 10A:5-5.2(a). The Department proposes to delete N.J.A.C. 10A:5-7.1(g), which sets forth a process of internal DOC reporting temporary close custody placements and removals, as that also is better suited to internal management procedures.

At N.J.A.C. 10A:5-2.1(a)4, the Department proposes to replace Special Administrative Segregation Review Committee (SASRC) with Special Administrative Review Committee (SARC) to reflect an internal Department change in the committee name.

The Department proposes to repeal N.J.A.C. 10A:5-3 as that subchapter pertains to Administrative Segregation.

At recodified N.J.A.C. 10A:5-2.8(b), the addition of a new sentence is proposed to make clear that the Management Control Unit (M.C.U.) hearing officer initial placement hearing processes and functions are the same as those used by the Management Control Unit Review Committee (M.C.U.R.C.) at N.J.A.C. 10A:5-2.6 for formal reviews.

To reflect language used in the Act, the Department proposes the following amendments:

- Replacing references to “damage or destruction of property in a correctional facility” with “safe and secure operation of a correctional facility” at N.J.A.C. 10A:5-2.5(a)2, 2.6(i)2 and (n), 2.8(a) and (a)1 and (b)10 and 15, 2.9(c)1, (c)2ii, and (c)9, and 5.3(c)3, in keeping with the language included in the Act;
- Deleting the phrase “of interrupting the operation of a State correctional facility” at N.J.A.C. 10A:5-2.5(a)3 as it is redundant following the addition of the phrase “to the safe and secure operation of a correctional facility” at N.J.A.C. 10A:5-2.5(a)2;
- Restructuring N.J.A.C. 10A:5-2.5(a) as a single sentence without the existing three codified paragraphs;
- Replacing references to “reasonable evidence” with “clear and convincing evidence” at N.J.A.C. 10A:5-2.8(b)15 and 7.1;
- Replacing “orderly operation” with “safe and secure operation” at N.J.A.C. 10A:5-5.5(a) and (b); and

- Replacing “as soon as possible” with “within 72 hours absent extraordinary circumstances” at N.J.A.C. 10A:5-2.9(c)2iii.

In order to reflect the requirement in the Act for a hearing within a specified time, the Department proposes to replace the phrase “within 20 business days after receipt of the notice” with the phrase “within 72 hours of placement in protective custody at N.J.A.C. 10A:5-5.2(i).

The Department proposes to add new N.J.A.C. 10A:5-5.2(m) to set forth the evidentiary requirement for clear and convincing evidence that confinement in Protective Custody is necessary to prevent reasonably foreseeable harm and that a less restrictive intervention would be insufficient to prevent harm as set forth in the Act at N.J.S.A. 30:4-82.8.d(4)(b).

At N.J.A.C. 10A:5-5.2(n) the Department proposes to add the standard from N.J.S.A. 30:4-82.8.d(2)(b) that requires a healthcare evaluation immediately prior to placement of an inmate in involuntary protective custody.

The Department proposes to combine N.J.A.C. 10A:5-5.4(a) and (b), since the review requirements for both voluntary and involuntary protective custody are the same under the Act. The proposed amendments also replace the preexisting requirements for annual or yearly reviews with reviews every 30 days (N.J.S.A. 30:4-82.8.a(4)). In addition, the Department proposes to add new N.J.A.C. 10A:5-5.4(c) and (d) to reflect current practices that require that documentation be retained in the inmate file when inmates waive the hearings and to clearly state that hearings will be conducted once per year, or more often if needed, for involuntary protective custody in accordance with N.J.A.C. 10A:5-5.2 and 3.

New N.J.A.C. 10A:5-5.5(d) is proposed for compliance with N.J.S.A. 30:4-82.8.a(14), which prohibits release of inmates from protective custody in the final 180 days of the term of incarceration, unless necessary for safety reasons.

The Department proposes to replace all references to Temporary Close Custody (TCC) with Investigative Housing Unit (IHU) at N.J.A.C. 10A:5-7.1(a) through (f) as part of the Department’s restructuring of close custody units.

The Department proposes to add the word “emergency” to N.J.A.C. 10A:5-7.1(b)3, to reflect that the criteria for placement is of an emergency nature. The Department also proposes to delete N.J.A.C. 10A:5-7.1(c) and (g), as it is more appropriate to address internal Department communications and internal reports in internal management procedures. At N.J.A.C. 10A:5-7.1(d), some of the five items listed are redundant. Paragraphs (d)2 and 3 are included in the generalized reference to close custody units in paragraph (d)5; therefore, the Department proposes to delete paragraphs (d)2 and 3.

The Department proposes new rules at N.J.A.C. 10A:5-8 for the new Adjustment Unit (A.U.) in keeping with the requirements of the Act. The Act permits isolated confinement for 20 days, but the Department believes five to 15 days will be sufficient for disciplinary purposes and may be followed by added sanctions in the Restorative Housing Unit based on the severity of the offense as will be set forth in Chapter 4, Inmate Discipline. This new subchapter, N.J.A.C. 10A:5-8, sets forth some of the requirements from the Act including, but not limited to, the following:

- If there is a healthcare consideration that could potentially prevent placement confinement in the A.U., the inmate must first receive a healthcare evaluation;
- Release from the A.U. must be ordered by the Administrator or designee; and
- A Correction Major will determine the personal property and services that may be afforded to the inmate while in the A.U.

The Department proposes new rules at N.J.A.C. 10A:5-9 for a new Restorative Housing Unit (R.H.U.). The creation of this unit is one of the many steps the Department is taking in order to fulfill some of the requirements of the Act for less restrictive interventions associated with disciplinary sanctions. The Restorative Housing Unit will provide increased inmate out-of-cell time, including the opportunity to participate in a minimum of five hours of recreation per week. The opportunity to participate in other meaningful activities will be offered and is intended to encourage socialization, education, and the kind of behavior and conduct expected in general population.

New rules are proposed at N.J.A.C. 10A:5-10 for a new Temporary Administrative Housing Unit that will be used when inmates must be removed from general population but are not appropriate for other close custody units.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rules, amendments, recodifications, and repeals bring the rules into alignment with portions of N.J.S.A. 30:4-82.5 through 11, which restricts the use of isolated confinement in correctional facilities in the State of New Jersey. The Department anticipates a positive social impact on the general public and inmate population resulting from the proposed rulemaking. The law enforcement community may, however, feel that some process changes resulting from the rulemaking could potentially jeopardize safety and security in correctional facilities. While the Department takes safety and security seriously and places safety as a paramount consideration, it believes the rulemaking can be managed consistent with safety concerns.

Economic Impact

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

The budget funds previously allocated by the State are insufficient to meet the added demands of the Isolated Confinement Restriction Act.

Federal Standards Statement

The proposed new rules, amendments, recodifications, and repeals 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. They are not subject to any Federal statutes, requirements, or standards; therefore, a Federal standards analysis is not required.

Jobs Impact

The proposed rulemaking will generate additional jobs as identified in the Economic Impact above.

Agriculture Industry Impact

The proposed new rules, amendments, recodifications, and repeals will have no impact on the agriculture industry.

Regulatory Flexibility Statement

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

Housing Affordability Impact Analysis

The proposed new rules, amendments, recodifications, and repeals have no impact on housing affordability and there is an extreme unlikelihood that the rulemaking would evoke a change in the average costs associated with housing. The proposed new rules, amendments, recodifications, and repeals concern inmates in New Jersey State correctional facilities, the New Jersey Department of Corrections, and governmental entities responsible for the enforcement of the rules.

Smart Growth Impact Development Analysis

The proposed new rules, amendments, recodifications, and repeals will have no impact on the achievement of smart growth and that there is an extreme unlikelihood the proposed rulemaking will evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed rulemaking concerns inmates, the New Jersey Department of Corrections, and governmental entities responsible for the enforcement of the rules.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department of Corrections has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10A:4-10.2 through 10.18 and 10A:5-1.2, 1.4, 2.12 through 2.27, 2.29, 2.31, 3, 5.6 through 5.21, 5.23, and 5.24.

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

CHAPTER 4 INMATE DISCIPLINE

SUBCHAPTER 10. (RESERVED)

CHAPTER 5 CLOSE CUSTODY UNITS

SUBCHAPTER 1. GENERAL PROVISIONS

10A:5-1.1 Purpose

[(a)] The purpose of this chapter is to establish rules for[:

1. Assigning inmates to close custody units;
2. Reviewing the progress of inmates assigned to close custody units;
3. Releasing inmates from close custody units, when appropriate;

4. Operating] **close custody units, including the Pre-Hearing Disciplinary Housing Unit (P.H.D.H), Management Control Unit (M.C.U.), [Administrative Close Supervision Unit, and] Restorative Housing Unit (R.H.U.), Adjustment Unit (A.U.), Protective Custody Unit[; and] (P.C.), Emergency Confinement Unit (ECU), Investigative Housing Unit (I.H.U.), and Temporary Administrative Housing Unit.**

[5. Placement in temporary close custody.]

10A:5-[1.3]1.2 Definitions

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

["Adjustment Committee" means the committee within a correctional facility that is authorized to hear and adjudicate inmate violations of prohibited acts.

"Administrative Segregation Level Program" means a two-level program established within an Administrative Close Supervision Unit. The levels are described as follows:

1. Level 1 is the program entry level in which an inmate's possessions, activities, privileges, and amenities shall be most highly restricted; and

2. Level 2 is the level in which an inmate's possessions, activities, privileges, and amenities shall be less restricted than level 1 but more restricted than general population.

"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.]

"Adjustment Unit" mean a close custody unit used as a form of separation of an inmate from general population for a specific period of time after a finding of guilt for any offense in Category A. The Adjustment Unit is intended to deter the inmate from future violations.

"Emergency confinement" means the segregation of an inmate in a correctional facility when there is reasonable cause to believe that this segregation is necessary for reducing a substantial risk of imminent serious harm to the inmate or others, as evidenced by recent conduct.

"Investigative Housing Unit (I.H.U.)" means a close custody unit used for the non-punitive removal of an inmate from the inmate general population, or other assigned housing, with restriction to the inmate's cell or to a close custody unit for a period not to exceed 72 hours, in order to conduct an investigation related to the inmate, which may include, but is not limited to, special observations (other than healthcare) of the inmate in relation to a disciplinary offense, unless information or evidence warrants an extension beyond 72 hours and the extension is approved by the appropriate supervisor.

"Management Control Unit (M.C.U.)" means a close custody unit to which an inmate may be assigned if the inmate poses a substantial threat to the safety of others[;], of damage to, or destruction of, property[;], or of interrupting the operation of a State correctional facility.

...

"Member of vulnerable population" means any inmate who:

1. Is 21 years of age or younger;

2. Is 65 years of age or older;

3. Has a disability based on a mental illness, as defined in subsection r. of section 2 of P.L. 1987, c. 116 (N.J.S.A. 30:4-27.2), a history of psychiatric hospitalization, or has recently exhibited conduct, including, but not limited to, serious

self-mutilation, indicating the need for further observation or evaluation to determine the presence of mental illness;

4. Has a developmental disability, as defined at N.J.S.A. 30:6D-25;

5. Has a serious medical condition that cannot effectively be treated in isolated confinement;

6. Is pregnant, is in the postpartum period, or has recently suffered a miscarriage or terminated a pregnancy. "Postpartum period" means the 45 days after childbirth;

7. Has a significant auditory or visual impairment; or

8. Is perceived to be lesbian, gay, bisexual, transgender, or intersex.

...

"Restorative Housing Unit" (R.H.U.) means a close custody unit that is less restrictive than the Adjustment Unit and may be used to remove an inmate from the general population of a correctional facility because of one or more disciplinary infractions.

"Special Administrative [Segregation] Review Committee ([S.A.S.R.C.] S.A.R.C.)" means the committee members designated by the Director, Division of Operations, **who are** responsible for the bimonthly review of the status of the inmates assigned to [all Administrative Close Supervision Units] **the Restorative Housing Unit (R.H.U.).**

["Temporary close custody means the non-punitive removal of an inmate from the inmate general population, or other assigned housing, with restriction to the inmate's cell or to a close custody unit for a period not to exceed 72 hours, for special observation (other than healthcare needs) or investigation, unless information or evidence warrants an extension beyond 72 hours and the extension is approved by the appropriate supervisor.]

10A:5-[2.28]1.3 [Special custodial responsibilities] **Rules common to all close custody units**

(a) Special custodial responsibilities are as follows:

[(a)] **1.** Because of the increased need for close security within the [M.C.U.] **close custody units**, the frequency and intensity of certain custodial functions shall be increased. Thorough cell searches may be conducted as often as once a week if found necessary for certain inmates or as often as twice a month for the entire population of the M.C.U. Spot-checks of cells may be conducted at any time.

[(b)] **2.** [Despite the increased need for security, precautions] **Precautions** shall be taken to ensure that the inmates in the M.C.U. are not subjected to unnecessary limitations of their personal privacy. The [M.C.U.] **close custody unit** supervisor or another person acting on the direct or standing orders of the Administrator must authorize any non-routine cell searches.

(b) Disciplinary action within close custody units shall be in full force and effect (see N.J.A.C. 10A:4, Inmate Discipline).

(c) In addition to the rules contained in this subchapter, all other Department rules applicable to inmates shall apply with equal force to inmates in the close custody units.

(d) Ventilation, heating, lighting, and sanitation shall be as follows:

1. Proper ventilation, lighting, room temperatures, cleanliness, and properly functioning sanitary fixtures shall be maintained in cells within close custody units.

2. The Administrator or designee shall be responsible to provide for the daily inspections that shall be made to help ensure that the cells, corridors, toilets, showers, and other areas within close custody units are kept secure, clean, and sanitary.

3. Partial curtains may be permitted over the cell door, at the discretion of the Administrator.

4. Toilets that are flush controlled from outside the cells shall be flushed as often as is necessary to maintain good sanitary standards.

(e) Close custody unit inmates shall be served the regular correctional facility meals from the "menu of the day," unless a special diet is prescribed by a physician or a religious vegetarian diet has been approved by the correctional facility chaplain.

1. Disposable utensils shall be used when necessary.

(f) Grooming, showering, and shaving shall be as follows:

1. Hair care services shall be provided as needed.

2. Each inmate in a close custody unit shall be permitted to shave and shower three times a week, as indicated in the inmate handbook, unless permitting these activities would present an undue security hazard.

(g) Medical and psychiatric services shall be as follows:

1. Emergency medical and psychiatric care for inmates in close custody units shall be provided immediately;

2. Requests for inmate medical attention by staff or inmates in non-emergency situations shall be responded to by the health care staff who visit the close custody units daily;

3. Routine medical and psychiatric services shall be provided, equivalent to that which is provided to inmates in the general population for the M.C.U., R.H.U., and P.C.; and

4. Whenever it appears that an inmate is suffering from an emotional or psychiatric disturbance, arrangements shall be made for a psychiatric or psychological evaluation. See N.J.A.C. 10A:5-4.1 and 6.1 for rules specific to emergency housing and pre-hearing disciplinary housing.

(h) After a thorough search for contraband, all inmates shall be admitted to the close custody units dressed in clothing issued by the correctional facility.

1. The following items, as approved by the Administrator or designee, shall be permitted, or made available, to inmates upon admission to a close custody unit, as soon as reasonably practicable:

i. Clothing required for use in cell;

ii. Bedding and mattress;

iii. Personal hygiene supplies;

iv. Eating utensils;

v. Eyeglasses;

vi. A wristwatch;

vii. Religious indicia;

viii. Legal materials;

ix. Postage stamps; and

x. Reading and writing materials.

2. The possession and use of radios, televisions, typewriters, and other appliances in the close custody units shall be subject to the same guidelines as those developed by the Administrator for the general population or in accordance with unit internal management procedures. Personal televisions may be permitted in the Restorative Housing Unit

(R.H.U.) unless permitting these items would present an undue security hazard or the housing facility lacks the infrastructure to accommodate them.

3. Inmates in close custody units shall be permitted the same number of personal and library books as the general population. Procedures for requesting, receiving, and returning reading materials to the correctional facility's library and inmate law library are included in the inmate handbook.

4. Personal items, as approved by the Administrator or designee, shall be:

- i. Permitted in accordance with the inmate handbook; and**
- ii. Purchased from an authorized source of sale.**

(i) Disposition of inmate's personal possessions not authorized in close custody units are as follows:

1. Inmate personal possessions not authorized in close custody units shall not be stored by the correctional facility; and

2. Disposition of non-permissible personal possessions shall be handled in accordance with N.J.A.C. 10A:1-11, Personal Property of Inmates.

(j) Correctional facility clothing, bedding, and linens shall be laundered on a weekly basis.

(k) Inmates shall be provided access to legal services in accordance with N.J.A.C. 10A:6, Inmate Access to Courts.

1. Inmates shall also have access to the inmate law library by means of inmate paralegals who shall provide legal reference materials, services, and supplies to close custody unit inmates to the same degree as afforded inmates in the general population (see N.J.A.C. 10A:6-2.12 and 2.14).

(l) Correspondence, visiting, or telephone calling opportunities shall be available to inmates in the M.C.U., Investigative Housing Unit (I.H.U.), Restorative Housing Unit (R.H.U.), and Protective Custody units, but shall be provided in accordance with any special precautions as deemed necessary or appropriate by the Administrator.

1. No staff member shall monitor the content of conversations between an inmate and the inmate's attorney or spiritual advisor during visits.

2. Restrictions of visits or telephone calls for inmates in close custody units shall be made in accordance with this section and applicable sanctions.

(m) Efforts shall be made to provide opportunities for exercise and recreation consistent with custodial considerations. Inmates in close custody units shall be offered a minimum of five hours of exercise each week, unless compelling security, safety, or weather reasons dictate otherwise. When exercise is not permitted, the reasons shall be clearly documented.

1. The Administrator may take emergency action in suspending exercise or recreation privileges for any, or all, inmates until the emergency has passed. In any such emergency, the Administrator shall notify the Commissioner or designee.

(n) Educational programs shall be comparable to those programs available to inmates in general population to the extent possible, in accordance with security considerations and resources. Additional educational programs will be made available to inmates in the Restorative Housing Units as set forth at N.J.A.C. 10A:5-9.5(i).

(o) Inmates in the close custody units shall be visited daily during the business week by a member of the correctional facility's professional staff to determine any emergency or unusual needs of the inmates and to make referrals to appropriate departments or staff members.

1. Spiritual counseling shall be available on an individual basis as coordinated by the correctional facility's chaplain.

(p) Work opportunities shall be provided to inmates in Protective Custody (P.C.) in keeping with appropriate security considerations.

1. Pay and work time credits shall be commensurate with the skill level and the amount of work responsibilities involved, in applicable close custody housing units.

2. Education and program credits shall be commensurate with credits available to the general population.

3. Inmates in the I.H.U. shall be reassigned to cell sanitation and shall be able to earn work time credits and pay for this status.

4. Inmates in close custody units who are participating in formal school (not independent study) shall be entitled to earn work credits and special program credits, but shall not receive pay.

(q) Social, psychological, and counseling programs shall be as follows:

1. Treatment programs shall be available in close custody units to at least the same extent as available to the general inmate population. Healthcare personnel and a psychologist shall be assigned to close custody units and an area or office shall be provided for these services. The professionals shall provide services consistent with those provided to the general population and shall work closely with close custody unit supervisors and staff.

2. Counseling sessions shall be arranged upon the request of an inmate confined in close custody units.

3. Social, educational, and chaplaincy services/programs focused on transitioning inmates back into general population will be made available in Restorative Housing Units as set forth at N.J.A.C. 10A:5-9.3.

4. Two interview rooms shall be available within close custody units for use by the assigned professional staff, the close custody unit supervisor, the parole counselor, and professional representatives of outside agencies, such as, but not limited to, the Social Security Administration, the Veteran's Administration, and vocational rehabilitation agencies.

(r) Procedures for obtaining commissary items while in close custody units shall be detailed in the Inmate Handbook and/or as approved by the Administrator.

(s) Withdrawal of personal items or activities shall be done as follows:

1. Whenever, in the judgment of the custody staff member in charge of a close custody unit, there is imminent danger that an inmate will destroy property, clothing, or any items usually permitted in the cell, or injure him or herself, or another person, the custody staff member may deprive the inmate of such items, if practicable. In such cases, however, effort shall be made to provide a substitute for the item or to permit the inmate to use the item under the supervision of the custody staff member;

2. Whenever an inmate is deprived of any usually authorized item or activity, a written report shall immediately be forwarded to the Administrator or designee and a close custody unit supervisor shall identify the inmate and the item or activity withheld;

3. The Administrator or designee shall review any such restriction within one week. Any continued restriction shall be permitted only with the written authorization of the Administrator or designee; and

4. Such restrictions shall be reviewed on a weekly basis to determine whether there is reasonable certainty that the danger to a person or property is no longer imminent and the restriction may be lifted.

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.-3. (No change.)
4. Special Administrative [Segregation] Review Committee[s] (**S.A.R.C.**);
- 5.-6. (No change.)

10A:5-2.5 Assignment to the Management Control Unit (M.C.U.)

(a) An inmate shall be assigned to the M.C.U. when the M.C.U.R.C., after considering the criteria [in] **at** N.J.A.C. 10A:5-2.4, concludes that the inmate poses a substantial threat[:

1. To] **to** the safety of others[;
 2. Of damage to or destruction of property;] or **to the safe and secure operation of a correction facility.**
 - [3. Of interrupting the operation of a State correctional facility.]
- (b)-(c) (No change.)

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

(a) (No change.)

(b) 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] **in advance of** appearing before the M.C.U.R.C. The staff member delivering the notice shall sign [the form] **it** and indicate the time and date of delivery.

(c)-(h) (No change.)

(i) At the 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. 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. (No change.)

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] **clear and convincing** evidence, including behavior, correctional facility adjustment, and disciplinary history that the inmate continues to pose an identifiable threat[:

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

(j)-(m) (No change.)

(n) 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] **safe and secure** operation of [the] **a State** correctional facility. The M.C.U.R.C. shall have the discretion, however, to keep the hearing within reasonable limits.

(o)-(w) (No change.)

10A:5-2.8 Prehearing, initial placement hearing, and appeal of initial placement hearing

(a) The inmate may be placed in Prehearing M.C.U. by order of an Administrator or designee utilizing [Form 141—I Authorization for Prehearing] **an authorization for prehearing** M.C.U. **form** when 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.

1. The inmate shall be entitled to an initial placement hearing within [10 business days] **72 hours** following placement into Prehearing M.C.U., **absent exceptional circumstances**.

[(2)] **2.** An inmate placed in Prehearing M.C.U. shall be given written notice[, utilizing Form L.C. 36] **on the** Criteria Record Sheet, as described [in] **at** N.J.A.C. 10A:5-2.6 within 24 hours following placement in Prehearing M.C.U.

[(3)] A separate Form 141--I shall be completed for each inmate and, whenever possible, Form 141--I should be completed prior to placing the inmate in Prehearing M.C.U.]

[(4)] **3.** When an emergency exists [which] **that** precludes completion of [Form 141-I] **the authorization form** prior to placement, the form shall be completed immediately following placement. [After all appropriate parties have signed **the authorization** Form 141--I, it shall be placed in the inmate's classification folder and a copy shall be placed in the inmate's M.C.U. folder.]

[5. Additional copies of completed Form 141—I may be kept on file, for recordkeeping purposes, in any areas designated by the Administrator and a Correction Major.]

[6.] **4.** 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] **the authorization form**, 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] **the** 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.] **(b)** 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. **The M.C.U. Hearing Officer shall conduct the initial placement hearing utilizing the same processes for M.C.U.R.C. formal reviews and shall fulfill the functions designated for the M.C.U.R.C. and Administrator set forth at N.J.A.C. 10A:5-2.6.**

[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.] 1. The administration shall present [their] **its** 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 inmate's representative** or the M.C.U. Hearing Officer. The M.C.U. Hearing Officer may exclude any questions deemed irrelevant or harassing in nature.

Recodify existing 8.-9. as **2.-3.** (No change in text.)

[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.] **4.** The [following] **same criteria appearing at (b)1 above, which are used to initially place the inmate in the Prehearing M.C.U.** 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.]

Recodify existing 16.-18. as **5.-7.** (No change in text.)

(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. (No change.)

ii. Whether the decision of the M.C.U. Hearing Officer was based on [substantial] **clear and convincing** evidence; and

iii. (No change.)

2. (No change.)

10A:5-2.9 Use of Prehearing Management Control Unit during an emergency

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

(c) The following procedures shall be implemented and remain in effect until normal operations resume:

1. Inmates who have been identified as being a threat to the **safe and** secure [and orderly] operation of the correctional facility shall remain in Prehearing M.C.U. at housing assignments to be designated by the Administrator or designee.

2. Each inmate shall receive a written notice explaining that:

i. (No change.)

ii. The inmate has been identified as a threat to the [security and/or orderly] **safe and secure** operation of the correctional facility; and

iii. The inmate will receive an in-person hearing [as soon as possible] **within 72 hours, absent exceptional circumstances.**

3.-8. (No change.)

9. Conditions of confinement, as set forth in this subchapter, shall be modified as is reasonably necessary during the pending period of the emergency to ensure [security and the continued orderly] **the safe and secure** operation of the correctional facility.

10A:5-2.11 Disciplinary action within the Management Control Unit (M.C.U.)

Except in the case of a termination of contact visits sanction as established at N.J.A.C. 10A:4-5.1(c), no special restriction of privilege on disciplinary grounds, such as denial of outside recreation or of work opportunities, may be continued in M.C.U. for longer than 30 days. If, in the judgment of the Disciplinary Hearing Officer/Adjustment Committee, there are special custodial reasons for desiring to continue special restriction of the inmate's privileges for longer than 30 days, the Disciplinary Hearing Officer/Adjustment Committee shall recommend assignment to administrative segregation to the Institutional Classification Committee (I.C.C.).

10A:5-[2.30]2.12 (No change in text.)

SUBCHAPTER 3. (RESERVED)

SUBCHAPTER 4. [(RESERVED)] EMERGENCY CONFINEMENT UNIT

10A:5-4.1 Emergency Confinement Unit

(a) An inmate may be placed in the Emergency Confinement Unit for a period not to exceed 24 hours when the Administrator or designee determines that it is necessary to reduce a substantial risk to the inmate or others, or as evidenced by recent conduct.

(b) Criteria for placement in the Emergency Confinement Unit are:

1. When there is reasonable belief the confinement is necessary to reduce a substantial risk of imminent serious harm to the inmate or others as evidenced by recent conduct;

2. That the inmate's presence in general population poses a danger to the inmate, staff, other inmates, or the public; or

3. When there is clear and convincing evidence that the inmate has committed a violation of a prohibited act listed at N.J.A.C. 10A:4-4.

(c) An inmate held in the Emergency Confinement Unit in a State correctional facility shall receive an initial medical and mental health evaluation immediately prior to placement in the Emergency Confinement Unit and a personal and comprehensive medical and mental health evaluation shall be conducted by a member of the medical staff within 24 hours. Reports of these evaluations shall be immediately provided to the facility Administrator.

(d) An inmate shall not be placed in the Emergency Confinement Unit for non-disciplinary reasons.

(e) An inmate shall not be placed in the Emergency Confinement Unit if the inmate is a member of a vulnerable population.

SUBCHAPTER 5. PROTECTIVE CUSTODY

10A:5-5.1 Assignment to Prehearing Protective Custody or [Admission] **admission** to a Protective Custody Unit

(a) (No change.)

(b) If an inmate voluntarily requests placement in Protective Custody, he or she shall complete, sign, and submit to the appropriate Custody Supervisor [Form 146-I Voluntary – Protective Custody Consent. The] **a voluntary protective custody consent indicating the** reasons for requesting Protective Custody [must be indicated on the form]. If the inmate's reasons cannot be verified, are deemed to be frivolous by the Administrator or designee, or if the conditions

forming the basis for the voluntary placement have abated or no longer exist, placement in Protective Custody may be denied or the inmate may be released from Protective Custody.
(c) (No change.)

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

(a) An inmate under consideration for placement in Protective Custody shall be given written notice [on Form 146-II Notice] of [Protective Custody Hearing – Involuntary] **an involuntary Protective Custody hearing**, as soon as practicable.

[(b) An inmate placed in Prehearing Protective Custody or a Protective Custody Unit on an emergency basis shall be given written notice on [Form 146-II] no later than three business days after such emergency placement.]

[(c)] **(b)** A copy of [Form 146-II] **the written notice** shall be given to the inmate at least 24 hours prior to the in-person hearing **and may include any of**]. The notice shall be signed by the staff person delivering it and the date and time of delivery shall be noted.

(d) Form 146-II shall include] the following:

[1. A statement of reasons used by the administration to initiate the Protective Custody hearing procedure:

2. The date of the Protective Custody hearing; and

3. Notification that the inmate may present any relevant evidence supporting or contesting placement in Protective Custody.

(e) Evidence may consist of:]

1. Witnesses' written statements;

2. Documents related to the nature of threat of harm involved; or

3. Other **written** facts relevant to the need or lack of need for placement in Protective Custody.

Recodify existing (f)-(h) as **(c)-(e)** (No change in text.)

[(i)] **(f)** Inmates placed involuntarily in Prehearing Protective Custody shall receive a hearing within [20 business day after receipt of the notice] **72 hours of placement in Prehearing Protective Custody**, unless there are exceptional circumstances, unavoidable delays, or reasonable postponements.

Recodify existing (j)-(k) as **(g)-(h)** (No change in text.)

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

(j) The inmate may be placed in involuntary Protective Custody only when there is clear and convincing evidence that confinement is necessary to prevent reasonably foreseeable harm and a less restrictive intervention would not be sufficient to prevent the harm (N.J.S.A. 30:4-82.8.d(4)(b)).

(k) An inmate held in involuntary Protective Custody in a State correctional facility shall receive an initial medical and mental health evaluation immediately prior to placement in involuntary protective custody and a personal and comprehensive medical and mental health evaluation within 24 hours. Reports of these evaluations shall be immediately provided to the facility Administrator.

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

(a) The inmate shall be advised of the opportunity to appeal to the Administrator or designee at the time that the inmate is provided with the Protective Custody hearing decision [(Form 146--III Protective Custody Hearing Adjudication)].

(b) (No change.)

(c) All appeals shall be reviewed by the Administrator or designee and the following factors shall be considered:

1.-2. (No change.)

3. Whether the decision to place the inmate in Protective Custody was justifiable considering the inmate's safety and the continued **safe and** secure[, orderly] operation of the correctional facility.

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

10A:5-5.4 Review of all inmates in Protective Custody [Units] **units**

(a) [Each inmate] **Inmates** in Protective Custody [voluntarily] shall be provided [an in-person] **a** review [annually, or more often if necessary] **every 30 days**, by the Institutional Classification Committee (I.C.C.).

(b) An inmate who is placed in Protective Custody involuntarily shall, in every case, have an in-person hearing [once per year, or more often if necessary], in accordance with procedures specified [in] **at** N.J.A.C. 10A:5-5.2 and 5.3.

(c) If an inmate chooses to waive the hearing, the decision to waive the hearing shall be documented and retained in the inmate file.

(d) An inmate who is placed in Protective Custody involuntarily shall, in every case, have an in-person hearing once per year, or more often if necessary, in accordance with N.J.A.C. 10A:5-5.2 and 5.3.

10A:5-5.5 Release of inmates in Protective Custody [Units] **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] **a request for release from Protective Custody** to the appropriate Custody Supervisor. In order to approve such a requested release, the Institutional Classification Committee (I.C.C.), the Administrator or designee must be satisfied that there is no known danger to the inmate's well-being and no known threat to the safe[, **and** secure [or orderly] operation of the correctional facility. Should the request for release **from voluntary Protective Custody** be denied, the inmate may request in writing [to be deemed] **that continued placement in protective custody be considered** an involuntary placement [into] **in** Protective Custody [and the applicable provisions of this subchapter shall apply].

(b) An inmate who has been placed in Protective Custody involuntarily may be released by the Administrator or designee, upon recommendation by the I.C.C. when they are satisfied that the conditions forming the basis for the inmate's placement in Protective Custody have abated or no longer exist and there is no known threat to the safe[, **and** secure [or orderly] operation of the correctional facility.

(c) (No change.)

(d) An inmate in a State correctional facility shall not be directly released from non-congregate Protective Custody to the community during the final 180 days of the inmate's term of incarceration, unless it is necessary for the safety of the inmate, staff, other inmates, or the public.

10A:5-[5.22]**5.6** (No change in text.)

SUBCHAPTER 6 [(RESERVED)] **PREHEARING DISCIPLINARY HOUSING UNIT**

[10A:4-10.1] **10A:5-6.1** Confinement in Prehearing Disciplinary Housing

(a) An inmate may be placed in Prehearing Disciplinary Housing in those instances where it appears necessary to remove or isolate the inmate from the general population until an investigation into the inmate's alleged misconduct can be completed and a disciplinary hearing can be held pursuant to N.J.A.C. 10A:4-9, Disciplinary Procedures. Confinement in Prehearing Disciplinary Housing shall be deemed necessary only where it appears that, if the inmate remained in his or her existing housing unit, the inmate would constitute a threat to other inmates, staff members, the inmate, or to the safe, secure, and orderly operations of the correctional facility.

1. An inmate shall not be placed in the Prehearing Disciplinary Housing if the inmate is a member of a vulnerable population.

(b) Confinement in Prehearing Disciplinary Housing may consist of placement in the [Close Custody Unit] **close custody unit** or confinement to the inmate's room or housing unit **and shall be preceded by a personal evaluation by a healthcare professional.**

(c) Factors that may be considered in determining whether confinement in Prehearing Disciplinary Housing is warranted include **that there is clear and convincing evidence that:**

1.-3. (No change.)

4. The inmate has been charged with inciting others to engage in an assault upon another person, causing serious destruction of property, or participating in a group demonstration or work stoppage and, in the opinion of the correctional staff, there is a substantial possibility the inmate will continue such incitement **causing a threat to the safety and security of a correctional facility;**

5. The inmate has been charged with arson, [or serious destruction of property] **flooding the cell, damaging plumbing fixtures, or other actions causing a threat to the safety and security of a correctional facility** and, in the opinion of the correctional staff, there is a substantial likelihood that the inmate may engage in additional arson or destruction of property **or other behaviors that threaten the safety and security of the correctional facility.**

(Whenever the destruction to property **threat to the safety and security of a correctional facility** consists of flooding the cell or damaging plumbing fixtures, the inmate may be placed in Prehearing Disciplinary Housing in a "DRY" cell);

6.-9. (No change.)

(d) If an inmate is confined in Prehearing Disciplinary Housing as a result of any of the factors [in] **at** (c) above, such confinement must be authorized, in writing, by the custody staff supervisor[. Form 255-I, Authorization for Prehearing Disciplinary Housing, shall be utilized when placing an inmate in Prehearing Disciplinary Housing. A separate Form 255-I must be completed for each inmate and, wherever possible, Form 255-I should be completed] prior to placing the inmate in Prehearing Disciplinary Housing. When an emergency exists, [that precludes completion of Form 255-I prior to placement, Form 255-I] **written authorization** shall be completed immediately following placement. After all appropriate parties have signed [Form 255-I] **the authorization**, it shall be placed in the inmate's folder. Additional copies [of the completed Form 255-I may be kept on file] **shall be maintained**, for recordkeeping purposes, in areas designated by the Administrator and a Correction Major.

(e) (No change.)

(f) Any time spent in Prehearing Disciplinary Housing shall be credited to any subsequent [administrative segregation] **Restorative Housing Unit (R.H.U.)** sanction imposed.

SUBCHAPTER 7. TEMPORARY CLOSE CUSTODY

10A:5-7.1 Placement in [temporary close custody] **the Investigative Housing Unit (I.H.U.)**

(a) An inmate may be placed in [temporary close custody] **the I.H.U.** for a period not to exceed 72 hours unless exceptional circumstances, such as, but not limited to, other information received or other [substantial] **clear and convincing** evidence found warrant extension of this time period.

1. Placement of the inmate in I.H.U. will be reviewed within 24 hours of placement by a supervisor that was not involved in the initial placement decision. Placement in I.H.U. shall be preceded by an evaluation by a healthcare professional.

2. An inmate shall not be placed in the Investigative Housing Unit if the inmate is a member of a vulnerable population.

(b) Criteria for placement of an inmate in [temporary close custody] **the Investigative Housing Unit (I.H.U.)** and status are:

1.-2. (No change.)

3. Any other **emergency** reason, which, in the opinion of the Administrator, or designee, requires [temporary close custody] **Investigative Housing Unit (I.H.U.)** confinement to protect the inmate, staff, general public, and/or the security and control of the correctional facility.

[(c) When placement of an inmate in temporary close custody is ordered by the Administrator's designee, the designee shall, as soon as administratively possible within 72 hours, inform the Administrator and shall provide a written report to the Administrator setting forth the reason for every such placement.]

[(d)] **(c)** On or before the expiration of the 72-hour period, unless there are emergent reasons for extension, the inmate shall be released from [temporary close custody] **the Investigative Housing Unit (I.H.U.)** to:

1. (No change.)

[2. Prehearing disciplinary housing;

3. Detention in connection with a disciplinary action pursuant to N.J.A.C. 10A:4;]

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

[5.] **3.** Another close custody unit [in accordance with procedures set forth in this chapter,] such as, **the Protective Custody Unit** or the Management Control Unit.

[(e)] **(d)** Release from [temporary close custody] **the Investigative Housing Unit (I.H.U.)** may be ordered only by the Administrator or designee.

[(f)] **(e)** In consideration of the reason for an inmate's placement in [temporary close custody] **the Investigative Housing Unit (I.H.U.)**, 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] **the Investigative Housing Unit (I.H.U.)**.

[(g) The Administrator shall forward a monthly written report of all placements and releases from temporary close custody to the Assistant Commissioner, Division of Operations for review.]

SUBCHAPTER 8. ADJUSTMENT UNIT

10A:5-8.1 Placement in the Adjustment Unit (A.U.)

(a) An inmate may be placed in the Adjustment Unit (A.U.) for a period of five to 15 days with a finding of guilt for any offense in Category A when there is reasonable cause to believe that the inmate would create a substantial risk of serious harm to himself, herself, or another, including, but not limited to, a correctional police officer, other employee, or volunteer in the facility, as evidenced by recent threats or conduct, and a less restrictive intervention would be insufficient to reduce this risk (see N.J.A.C. 10A:4-4.1) unless:

1. The inmate is a member of a vulnerable population; or
2. If a medical or mental health professional determines that the inmate is not appropriate for placement in the A.U.

(b) An inmate held in the Adjustment Unit in a State correctional facility shall receive an initial medical and mental health evaluation immediately prior to placement in the Adjustment Unit and a personal and comprehensive medical and mental health evaluation within 24 hours. Reports of these evaluations shall be immediately provided to the facility administrator.

(c) Release from the Adjustment Unit (A.U.) may be ordered only by the Administrator or designee.

(d) In consideration of the reason for an inmate's placement in the Adjustment Unit (A.U.), 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 the A.U.

(e) The Administrator shall forward a monthly written report of all placements and releases in the Adjustment Unit (A.U.) to the Assistant Commissioner, Division of Operations, for review.

SUBCHAPTER 9. RESTORATIVE HOUSING UNIT (R.H.U.)

10A:5-9.1 Criteria for assigning inmates to the Restorative Housing Unit (R.H.U.)

(a) An inmate who is found guilty of committing one or more of the prohibited acts in Category A or B, as set forth at N.J.A.C. 10A:4-4.1(a)1 and 2 shall be subject to disciplinary action and one or more sanctions imposed by a Disciplinary Hearing Officer. Sanctions imposed for a finding of guilt for the prohibited acts in Categories A and/or B are the most serious and may include removal from general population and assignment to a Restorative Housing Unit (R.H.U.) in addition to other sanctions as may be deemed necessary by the Disciplinary Hearing Officer and/or Administrator. However, where a medical or mental health professional has made a determination that the inmate is not appropriate for placement in an R.H.U., the inmate may receive one or more of the less restrictive sanctions listed at N.J.A.C. 10A:4-5.1(d) and (e).

(b) Repeat occurrences of a specific infraction(s) are addressed at N.J.A.C. 10A:4-5.1(d) and may include removal from general population and assignment to a Restorative Housing Unit (R.H.U.).

10A:5-9.2 Structure of the Restorative Housing Unit (R.H.U.)

The R.H.U. shall provide a structured, controlled environment where inmate behavior shall be closely monitored and documented by a team of custody and civilian staff. The R.H.U. is designed to encourage inmates to improve behavior patterns. Inmates in the R.H.U. are afforded the opportunity to participate in authorized out-of-cell

programming and congregate interactions, structured activities, and educational programs to prepare them for reintegration into general population.

10A:5-9.3 Out-of-cell activities

(a) Inmates housed in R.H.U. shall have meaningful opportunities to participate in out-of-cell activities, social interaction, and programs of a social, educational, chaplaincy, substance abuse, or addiction nature. Additionally, inmates shall be afforded the opportunity to participate in congregate interaction above and beyond the five hours of recreation per week required at N.J.A.C. 10A:5-1.3(n).

(b) Inmate participation in out-of-cell services and activities is voluntary and refusal to participate will not be subject to disciplinary sanction as set forth at N.J.A.C. 10A:4-5.1, but will result in an advisement or report to the Special Segregation Review Committee (S.A.R.C.)

(c) Inmate behavior while participating in out-of-cell services and activities shall be monitored by staff and reported to S.A.R.C.

(d) Disruptive inmate behavior shall result in removal of the inmate from the out-of-cell service or activity and an advisement or report to S.A.R.C. Any behavior rising to a disciplinary infraction will be addressed through the disciplinary process set forth at N.J.A.C. 10A:4-4.1 and 5.1.

10A:5-9.4 Inmate behaviors in the R.H.U.

(a) Inmates in R.H.U. shall be responsible for their own:

1. Participation in authorized congregate interactions, structured activities, and educational programs;
2. Behavior modification enabling the inmate to return to general population;
3. Personal interactions and behaviors with others; and
4. Compliance with the rules of the Department, the correctional facility, and the R.H.U.

(b) Failure to follow rules and inappropriate or disrespectful behavior shall result in disciplinary action and/or further loss of privileges.

(c) Minor infractions that demonstrate a resistance to comply with expected behaviors while in the R.H.U. or the offered services and programs shall be documented and addressed utilizing the “On the Spot” disciplinary process at the discretion of the custody or civilian staff member (See N.J.A.C. 10A:4-7.3).

(d) All infractions, as well as all custody and program reports, shall be provided to S.A.R.C., so the committee can make a proper determination when reviewing inmate progress in the R.H.U.

(e) Serious disciplinary infractions shall be addressed through the disciplinary process (See N.J.A.C. 10A:4-4.1).

10A:5-9.5 Assignment to the Restorative Housing Unit (R.H.U.)

(a) All sanctions, or parts of sanctions, imposed by the Disciplinary Hearing Officer that include assignment to a Restorative Housing Unit (R.H.U.), shall be referred by the Disciplinary Hearing Officer to the Institutional Classification Committee (I.C.C.) for review. The I.C.C. shall consider any relevant factors including, but not limited to:

1. The circumstances and gravity of the disciplinary infraction;

2. The reason(s) given by the Disciplinary Hearing Officer for the sanction imposed;
 3. The inmate's previous disciplinary record; and
 4. Whether other available dispositions are adequate to regulate the inmate's behavior within acceptable limits.
- (b) If an inmate receives a Restorative Housing Unit sanction, the inmate shall be referred to the Centralized Reception Assignment Facility (CRAF) to schedule inmate transfer and/or transport to a R.H.U.
- (c) Time served in Prehearing Disciplinary Housing will be credited as time served in administrative segregation.
- (d) If the I.C.C. determines that the sanction is appropriate and within acceptable limits, and the inmate's presence in the general population could pose a threat to the safe, secure, and orderly operations of the correctional facility, the I.C.C. shall confirm assignment of the inmate to the R.H.U.
- (e) The I.C.C. shall provide written notice to the inmate of its decision confirming, modifying, or overruling the R.H.U. sanction together with the rationale for the decision.
- (f) A copy of the I.C.C. notice shall be filed in the inmate's classification folder.
- (g) If the inmate appeals the R.H.U. sanction, the appeal disposition will be completed by the Administrator, or designee, of the facility in which the charge was received.
- (h) Confrontations with the custody staff member initiating the disciplinary charge may be completed through Video TeleConferencing (VTC).
- (i) Inmates housed in R.H.U. shall have meaningful opportunities to participate in out-of-cell interaction provided through the Office of Transitional Services, Office of Education, Chaplaincy Office, and the Office of Substance Abuse Programming and Addiction Services. Additionally, inmates shall be afforded the opportunity to participate in congregate interaction above and beyond the five hours per week required pursuant to N.J.A.C. 10A:5-1.3(m).

10A:5-9.6 Special Administrative Review Committee ("S.A.R.C." or "the Committee")

- (a) The S.A.R.C. is responsible for providing a bimonthly review, or more frequent reviews if deemed necessary, of the status of inmates assigned to all Restorative Housing Units (R.H.U.).
- (b) The Director of the Division of Operations shall designate the following four voting members to serve on the S.A.R.C.:
1. An Associate Administrator or Assistant Superintendent from a facility;
 2. A representative from the Division of Operations;
 3. A chairperson from among the voting members; and
 4. A supervisory custody staff member of the rank of Correction Major or a Lieutenant to attend each meeting of the S.A.R.C.
- (c) The other members of the S.A.R.C. shall be composed of:
1. One voting member, who shall be a representative from the correctional facility where the R.H.U. is located; and
 2. Two non-voting members, who shall include an in-house psychiatrist or psychologist and a representative of the classification department that shall attend each meeting of the S.A.R.C.

(d) The S.A.R.C. shall meet as frequently as is necessary to accomplish the business of the S.A.R.C., and the meetings shall be held at a facility designated by the members.

(e) All inmates assigned to a R.H.U. shall have their assignment reviewed by the S.A.R.C. every 60 days, or more frequently if deemed necessary by the S.A.R.C., to evaluate inmate behavior while in the R.H.U.

(f) The S.A.R.C. review shall not necessitate the inmate's presence, although the Committee may, where it deems necessary, require the inmate to appear, unless he or she refuses to appear without the use of force.

(g) Upon review of the inmate's behavior, the S.A.R.C. may determine that the inmate should be released from the R.H.U. when it concludes that:

- 1. The initial need for placement in the R.H.U. no longer exists;**
- 2. The inmate has clearly demonstrated, by his or her behavior, that he or she can, and will, adequately conform to the rules and regulations of correctional facilities;**
- 3. The inmate's presence in the general population will not pose a threat to the safe, secure, and orderly operations of a correctional facility;**
- 4. The inmate's presence in the general population prior to completion of the sanction as specified by the Disciplinary Hearing Officer would not adversely affect the safety and security goals of a correctional facility; and/or**
- 5. The inmate has a history or presence of a healthcare condition and continued confinement in R.H.U. is likely to add to the inmate's mental decompensation.**

(h) If the S.A.R.C. determines not to release the inmate from the Restorative Housing Unit (R.H.U.), the inmate shall be so advised in writing, together with the reasons therefor, unless security considerations preclude disclosure of the reasons, in which case a notation as to the Committee's reasons and an explanation of how security would be adversely affected shall be placed in the inmate's folder.

(i) If the S.A.R.C. determines to release the inmate, the Committee shall give the inmate written notice of the decision, however, institutional designations will not be shared with the inmate. The inmate shall be:

- 1. Released into the general population of the correctional facility in which he or she has been confined in the R.H.U.;**
- 2. Referred to the M.C.U.R.C. for placement in the M.C.U.;**
- 3. Referred for a protective custody hearing; or**
- 4. Referred to the CRAF Intake Unit for transfer to a correctional facility as determined by the S.A.R.C.**

(j) If the inmate is transferred to general population and wishes a transfer to another correctional facility, the inmate shall submit a request for transfer to the I.C.C.

(k) Inmates shall be scored with the Reclassification Instrument prior to release from the R.H.U. and the score shall be considered by the S.A.R.C. when making inmate assignments. The S.A.R.C. is authorized to assign inmates to an appropriate correctional facility in accordance with the guidelines established for the I.C.C.

(l) Following the decision of the S.A.R.C. to transfer an inmate to another correctional facility, the S.A.R.C. shall refer the inmate to the appropriate staff member of the CRAF Intake Unit who shall be responsible for immediately arranging transportation of the inmate to the designated correctional facility.

SUBCHAPTER 10. TEMPORARY ADMINISTRATIVE HOUSING

10A:5-10.1 Temporary Administrative Housing (T.A.H.)

(a) T.A.H. is a temporary close custody unit for the non-punitive removal of an inmate from general population for a period not to exceed 72 hours to accommodate other temporary situations in which there is a concern for the safety of the inmate, or others, or in other emergent situations in which general population and other close custody units are not applicable. Inmates housed in this status for 20 hours or more shall be afforded the opportunity to have four hours of out-of-cell activity for every 24-hour period.

(b) Initial placement in T.A.H. shall be approved by a custody staff member of the rank of lieutenant or higher.

(c) Placement that extends 20 hours or more shall be approved by the Administrator or on call designee.