

CORRECTIONS

THE COMMISSIONER

Adult County Correctional Facilities

Adopted Amendments: N.J.A.C. 10A:31-16.1, 16.6, 16.10, 16.12, 16.14, 17.1, 17.2, 18.1, 18.2, and 18.4

Proposed: July 20, 2020, at 52 N.J.R. 1390(a).

Adopted: December 24, 2020, by Marcus O. Hicks Esq., Acting Commissioner, Department of Corrections.

Filed: March 31, 2021, as R.2021 d.038, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

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

Effective Date: May 3, 2021.

Expiration Date: November 8, 2024.

Summary of Public Comments and Agency Responses:

The official comment period ended September 18, 2020, and comments were received from Tess Borden for the ACLU-NJ.

A summary of the timely submitted comments and the Department of Corrections' ("Department" or "DOC") responses follow. The comments on the amendments include a number of topics, many which have been grouped into major topics as they appear below and provided responses to each topic.

1. COMMENT: The commenter states that the ACLU-NJ is concerned that the current rulemaking provides insufficient guidance to county jails to avoid violating the letter and spirit of the law.

The commenter urges the DOC to make changes to its rulemaking to reflect these critical components of the Isolated Confinement Restriction Act, N.J.S.A. 30:4-82.5 through 11 (the Act), even if those changes are considered “substantial” and, therefore, in “variance” with the rulemaking, such that they require public re-noticing pursuant to N.J.A.C. 1:30-6.3(a) and/or (c).

RESPONSE: The Department does not agree that the rulemaking is insufficient to comply with the Act. This notice of adoption includes non-substantial changes and some clarifications, but they are not substantial in nature as defined at N.J.A.C. 1:30-6.3(b) and the notice of adoption will not be in variance with the rules, as proposed.

2. COMMENT: The commenter states that Chapter 31 amendments should reflect rules for medical isolation, facility-wide lockdowns, and emergency confinement to ensure the county jails comply with the Act.

RESPONSE: The Department acknowledges that the Act provides for the use of isolated confinement in instances where there is a need for medical isolation or a facility lock-down. The Department does not believe there is a need for rules related to medical isolation because the standards are subject to guidelines set by the New Jersey Department of Health, the Center for Disease Control, and, as applicable, other Federal agencies and are already included in Internal Management Procedures in each adult county correctional facility. Rules and procedures associated with facility lock-downs are also included in adult county correctional facility Internal Management Procedures for security reasons. The Department has chosen not to implement emergency confinement for adult county correction facilities at this time.

3. COMMENT: The commenter states that Chapter 31 rules should specify that a person may not be placed in isolated confinement with other people if there is reasonable cause to believe “there is a risk of harm or harassment, intimidation, extortion, or other physical or emotional abuse to that inmate or another inmate in that placement.” N.J.S.A. 30:4-82.8.c.

RESPONSE: While the requirements noted in the comment are good day-to-day correctional safety practices that are already utilized by correctional facilities throughout New Jersey, the Department will include these basic safety principles in the rules as a demonstration of good faith in the implementation of the Act. The Department will add new N.J.A.C. 10A:31-16.1(k) that reads as follows: “An inmate shall not be placed in disciplinary detention or in any other cell or other holding or living space, in any facility, with one or more inmates if there is reasonable cause to believe that there is a risk of harm or harassment, intimidation, extortion, or other physical or emotional abuse to that inmate or another inmate in that placement.” (See N.J.S.A. 30:4-82.8.c).

4. COMMENT: The commenter states that rules at N.J.A.C. 10A:31 should state that members of the medical staff must evaluate people in isolated confinement to determine if they are members of a vulnerable population as frequently as clinically indicated, but at least once per week. N.J.S.A. 30:4-82.8.a(7). If a person is a member of a vulnerable population, and one of the exceptions at N.J.S.A. 30:4-82.8.d does not apply, the person must be immediately removed from isolation and any disciplinary sanction they were serving must be deemed satisfied.

RESPONSE: The Department will clarify N.J.A.C. 10A:31-16.1 by adding new paragraph (f)3, that reads as follows: “a person in disciplinary detention must receive a mental health and

physical health status examination conducted by a member of the medical staff as frequently as clinically indicated, but at least once per week. These examinations must occur in a confidential setting outside of the cell, whenever possible. If it is determined that the inmate is a member of a vulnerable population the inmate shall be immediately removed from disciplinary detention and the sanction shall be considered satisfied.” (See N.J.S.A. 30:4-82.8.a(7) and (8).)

5. COMMENT: The commenter states that a person should not be held in isolated confinement if they are within 30 days of their release date/during the final 30 days of the term of incarceration, “unless it is necessary for the safety of the inmate, staff, other inmates, or the public” per N.J.S.A. 30:4-82.8.a(14). That should be included in the rules.

RESPONSE: The Department acknowledges that N.J.S.A. 30:4-82.8.a(14) states, “An inmate in a county correctional facility shall not be directly released from isolated confinement to the community during the final 30 days of the inmate’s term of incarceration, unless it is necessary for the safety of the inmate, staff, other inmates of the public.” In the Department’s experience, the only scenario that falls within the statutory language is one in which an inmate would be held in a restricted environment close to release and that is in connection with non-congregate protective custody, which is for protection and safety, by definition. All other restricted confinements would involve serious disciplinary charges that could involve criminal charges. Adult county correctional facilities have policies in place for inmate release and holding inmates in isolation during the final 30 days is not permitted.

6. COMMENT: A person in isolated confinement cannot be denied access to food, water, or other basic necessities or to appropriate medical care, including emergency medical care.

N.J.S.A. 30:4-82.8.a(12) and (13).

RESPONSE: Rules pertaining to provision of all of the items in the comment are already provided for at N.J.A.C. 10A:31-3.6(c) and (d), 10.6, 13.1, and 13.2.

7. COMMENT: The commenter states that new definitions should be added at N.J.A.C. 10A:31-1.3 to reflect each of the applicable terms at N.J.S.A. 30:4-82.7. In addition, the definitions section still includes administrative segregation, whose definition is very similar to that of Disciplinary Detention, and yet is not a disciplinary sanction pursuant to Subchapter 16. A person may not be placed in isolated confinement for non-disciplinary reasons. N.J.S.A. 30:4-82.8.a(2).

Accordingly, placement in conditions of isolation in administrative segregation must either conform to the limitations on Disciplinary Detention or, if for non-disciplinary purposes, is now prohibited by law. Given the proposed deletion of administrative segregation in other Department rulemakings, the commenter suggests also deleting the term here and in the one other instance it appears in Chapter 31 (N.J.A.C. 10A:31-8.3, related to use of body imaging scanning equipment). Maintaining this definition without any guidance about its appropriate use, risks creating confusion surrounding disciplinary sanctions, restricted housing and/or close custody statuses, and isolated confinement.

RESPONSE: The commenters' general recommendation to include applicable terms in the Act at N.J.A.C. 10A:31-1.3 is very broad and definitions for terms that are not used by the adult county correctional facilities are not needed. The county correctional facilities do not utilize administrative segregation in the manner the commenter assumes; it is not isolated confinement, as defined in the Act. It is simply a removal of an inmate from general population to a close custody unit because of one or more disciplinary infractions.

8. COMMENT: Based on requirements in the Act, at N.J.S.A. 30:4-82.8.a(3), placement in isolated confinement, including Disciplinary Detention should provide that a person must receive a personal and comprehensive medical and mental health examination upon initial placement. A preliminary examination must be conducted by a member of the medical staff within 12 hours of confinement and an examination by a clinician must be conducted within 48 hours, except that it may be extended to 72 hours, if staffing levels require.

RESPONSE: The medical examination requirements are codified at N.J.A.C. 10A:31-16.1(f)1, and no change is needed.

9. COMMENT: The commenter states that, at N.J.A.C. 10A:31-13.10, a new paragraph should be added to state that people who are pregnant, postpartum, or who recently had an abortion or miscarriage shall not be placed in isolated confinement, including Disciplinary Detention.

RESPONSE: The commenter is referred to N.J.A.C. 10A:31-16.1(g), where it states that all members of a vulnerable population shall not be placed in the type of confinement described at N.J.A.C. 10A:31-16.1(f). As defined in the Act, people who are pregnant, postpartum, or who recently had an abortion or miscarriage are members of a vulnerable population.

10. COMMENT: At N.J.A.C. 10A:31-22.5, Classification hearing: new paragraphs should be added to this provision, or to another in the chapter, that state that, in the case of a classification that results in isolated confinement, initial procedures and reviews must provide timely, fair, and meaningful opportunities for the person to contest their confinement at hearings and reviews, with their associated rights. See N.J.S.A. 30:4-82.8.a(1), (3), and (5).

RESPONSE: Classification hearings are not addressed in this rulemaking; but nonetheless, do not result in isolated confinement of an inmate. The imposition of a disciplinary detention sanction is a direct result of a disciplinary hearing, as warranted and appropriate. The commenter is referred to N.J.A.C.10A:31-16.12 through 16.15 for further information on disciplinary hearings and appeals of disciplinary decisions.

11. COMMENT: The commenter states that protective custody, whether voluntary or involuntary, is not an exception to time limits in the Act at N.J.S.A. 30:4-82.8.a(9), meaning either that a person may only be in protective custody for 20 consecutive days if the conditions amount to isolation, or that the conditions must be changed such that the person is not in isolation, or both.

Subchapter 18 should be further revised, as necessary, to reflect that.

RESPONSE: Protective Custody, whether voluntary or involuntary, in county correctional facilities is not isolated confinement, as defined in the Act, because it does not involve restricting inmates to their cells for more than 20 hours per day. Therefore, protective custody is not subject to the isolated confinement restrictions set forth in the Act.

12. COMMENT: Based on requirements in the Act at N.J.S.A. 30:4-82.8.a(1) and (5), the commenter states that N.J.A.C. 10A:31-16.1(f)2 should include that placement in isolation must be established by clear and convincing evidence and that the final decision to place a person in isolated confinement must be made by the facility Administrator. The commenter also suggested N.J.A.C. 10A:31-16.6(b) and/or (c) should include the following requirements to impose a sanction of disciplinary detention: the final decision must be made by the facility Administrator, it must be based upon a finding, supported by clear and convincing evidence, that there is

reasonable cause to believe that the inmate would create a substantial risk of serious harm to himself, herself, or another; and a less restrictive intervention would be insufficient to reduce this risk.

RESPONSE: The Department agrees. The following new subsections will be added upon adoption for added clarification at N.J.A.C. 10A:31-16.1:

(h) Placement in disciplinary detention must be established by clear and convincing evidence.

(i) The final decision to place a person in disciplinary detention must be made by the facility Administrator.

(j) There is reasonable cause to believe that the inmate would create a substantial risk of serious harm to himself, herself, or another and a less restrictive intervention would be insufficient to reduce this risk.

13. COMMENT: The commenter suggests that new N.J.A.C. 10A:31-16(f)3 should be added to provide that after initial placement, a person in isolated confinement must receive a mental health and physical health status examination, conducted by a member of the medical staff as frequently as clinically indicated, but at least once per week. These examinations must occur in a confidential setting outside of the cell, whenever possible. (See N.J.S.A. 30:4-82.8.a(7).)

RESPONSE: The Department will clarify N.J.A.C. 10A:31-16.1 by adding new paragraph (f)3, that reads as follows: “a person in disciplinary detention must receive a mental health and physical health status examination conducted by a member of the medical staff as frequently as clinically indicated, but at least once per week. These examinations must occur in a confidential setting outside of the cell, whenever possible. If it is determined that the inmate is a member of a vulnerable population the inmate shall be immediately removed from disciplinary detention and

the sanction shall be considered satisfied.” (See N.J.S.A. 30:4-82.8.a(7) and (8).)

14. COMMENT: The commenter states that N.J.A.C. 10A:31-16.1(g) should not include “unit-wide” lockdowns as an exception to the prohibition on placing members of vulnerable populations in isolation. The exception described at N.J.S.A. 30:4-82.8.d(1) provides for a facility-wide lockdown only. Additionally, the proposed term “medical quarantines” should be replaced with “medical isolation,” since only the latter is provided as an exception at N.J.S.A. 30:4-82.8.d(3).

RESPONSE: Not omitting unit-wide lock downs was a technical oversight that will be corrected by removing the phrase from N.J.A.C. 10A:31-16.1(g) upon adoption. The word “quarantine” is itself isolation and the Department does not see the need to change the term, since the meanings are the same.

15. COMMENT: At N.J.A.C. 10A:31-16, the commenter suggests adding new language to provide that, for any person placed in isolation pursuant to the proceeding section, any period of isolated confinement must be no longer than 20 consecutive days or 30 days in a 60-day period. N.J.S.A. 30:4-82.8.a(9).

RESPONSE: The commenter is referred to N.J.A.C. 10A:31-17.2(c). The Department sees no need to duplicate the requirement as suggested.

16. COMMENT: The commenter suggests that N.J.A.C. 10A:31-16.6(d) is insufficient and unclear, as it suggests 30 consecutive days would be permissible. They state this provision must make clear that the time served may not exceed 20 consecutive days for multiple charges or 30 days total in a 60-day period pursuant to N.J.S.A. 30:4-82.8.a(9).

RESPONSE: The Department will clarify the rule upon adoption by adding the following new language at N.J.A.C. 10A:31-16.6(d), following the word charge: “and no more than 20 days for a single incident.”

17. COMMENT: The commenter states that at N.J.A.C. 10A:31-16.7(a) or 16.9(c), the DOC should include a notification of the person’s rights at the hearing pursuant to N.J.S.A. 30:4-82.8.a(4), so that they can prepare appropriately, including, but not limited to, their right to obtain and have representation of counsel at the hearing.

RESPONSE: N.J.S.A. 30:4-82.8.a(4) sets forth hearing procedures but does not require that the inmate be notified of their rights, even though they are, as a matter, daily practice in New Jersey correctional facilities. The procedures listed in the Act include “the right to be represented at the hearing” but they do not specify the right to counsel.

18. COMMENT: The commenter suggests that at N.J.A.C. 10A:31-16.10(a), the Department should provide that prehearing detention is prohibited unless the person’s presence in general population poses a danger, which must be based on enumerated considerations, or the facility administrator has granted approval in an emergency situation as provided for in the Act at N.J.S.A. 30:4-82.9.a. The commenter suggests that N.J.A.C. 10A:31-16.10(b) should provide that placement in isolation pending investigation of a disciplinary offense must be reviewed every 24 hours by a supervisory employee who was not involved in the initial placement decision. N.J.S.A. 30:4-82.9.b. They further suggest that the subsection should also provide that members of vulnerable populations may not be placed in prehearing detention. N.J.S.A. 30:4-82.8.b.

RESPONSE: For the purpose of further clarification, the Department will modify the language at

N.J.A.C. 10A:31-16.10(a) to more closely match N.J.S.A. 30:4-82.9.a, by replacing “inmate” with “inmate’s,” by replacing “constitutes a threat” with “presence in general population poses a danger,” and by replacing “to the orderly operation of the correctional facility” with “the public.” The Department also agrees to update N.J.A.C. 10A:31-16.10(b), for clarification, by adding “within 24 hours by a supervisory employee who was not involved in the initial placement decision and shall also be reviewed” just before the language requiring review by the Administrator. It should be noted that the review by a supervisor required pursuant to N.J.S.A. 30:4-82.9.b is to be within 24 hours and not every 24 hours. The Department disagrees with the recommended change at N.J.A.C. 10A:31-16.10 to add language prohibiting placement of vulnerable population inmates in prehearing detention, since it is already prohibited at N.J.A.C. 10A:31-16.1(f).

19. COMMENT: The commenter states that the rules, including the amendments proposed at N.J.A.C. 10A:31-16.12(b), are impermissible and/or unclear. Placement in prehearing detention must be reviewed every 24 hours, as described at N.J.S.A. 30:4-82.9.b. Moreover, a 30-day period in prehearing detention violates the Act’s prohibition on isolated confinement beyond 20 consecutive days. N.J.S.A. 30:4-82.8.a(9). By contrast, proposed N.J.A.C. 10A:31-16.12(l) appears to limit prehearing detention to 72 hours, which is permissible, provided the 24-hour reviews occur.

RESPONSE: Please see the Response to Comment 14 regarding the required review within 24 hours by a supervisory employee who was not involved in the initial placement decision. The Department feels there is no need to duplicate the requirement at N.J.A.C. 10A:31-16.12(b). The Department will, however, clarify the rule by removing the following language: “and a review

every 30 days thereafter, in the absence of exceptional circumstances, unavoidable delays, or reasonable postponements” from the end of the sentence.

20. COMMENT: The commenter states that N.J.A.C. 10A:31-16.12(f) and (g) should be modified to comply with the hearing requirements described at N.J.S.A. 30:4-82.8.a(4), specifically an unqualified right to appear at the hearing and the right to be represented by counsel.

RESPONSE: N.J.A.C. 10A:31-16.12(f) already provides inmates with the opportunity to be present during the Disciplinary Hearing, except during deliberations and for security reasons. N.J.S.A. 30:4-82.8.a(4) requires that procedures provide meaningful opportunities to contest the confinement, including “in the absence of exceptional circumstances, unavoidable delays, or reasonable postponements; the right to appear at the hearing; an independent hearing officer; and a written statement of reasons for the decision made at the hearing.” The language regarding the three exceptions indicates that the Act does not provide an unqualified right to appear. The right to be represented is set forth at N.J.A.C. 10A:31-16.12(g), which not only provides for representation by counsel substitute when the inmate is unable to collect and present the evidence on their own behalf, but also situations such as, insufficient language skills, as well as other instances that make understanding or communicating difficult. It should be noted that disciplinary hearings are heard by a Disciplinary Hearing Board/Disciplinary Hearing Officer. For these reasons, the Department declines to make changes at N.J.A.C. 10A:31-16.12(f) and (g).

21. COMMENT: At N.J.A.C. 10A:31-16.14, the commenter states that the rule should provide that, where a term of disciplinary detention is imposed, the final decision must be made by the facility

administrator based on clear and convincing evidence, and must include a finding that there is reasonable cause to believe that the inmate would create a substantial risk of serious harm to himself or another ... and a less restrictive intervention would be insufficient to reduce this risk. N.J.S.A. 30:4-82.8.a(1) and (5).

RESPONSE: For clarification, the Department will add the following language at N.J.A.C.

10A:31-16.14(a): “taking into consideration the criteria set forth at N.J.A.C.10A:31-16.1(f).” As the criteria cited by the commenter already appears at that portion of the Administrative Code text, there is no need to repeat it.

22.COMMENT: The commenter notes that the requirements in the Act, at N.J.S.A. 30:4-82.8.a(5), state that the decision to place someone in Disciplinary Detention must be made by the facility Administrator. Stating that the decision must be reviewed by the Administrator at N.J.A.C. 10A:31-17.1 is not sufficient and it must be revised to provide that the final decision is made by the facility Administrator.

RESPONSE: The Department will replace the term review with the term approval at N.J.A.C. 10A:31-17.1 as further clarification of the rule.

23.COMMENT: The commenter states that N.J.A.C. 10A:31-17.5 should be amended to include a record of the dates of medical and mental health evaluations for people in Disciplinary Detention , which must occur at a minimum once per week, but as frequently as clinically indicated and required at N.J.S.A. 30:4-82.8.a(7).

RESPONSE: N.J.A.C. 10A:31-17.5 sets forth minimal standards for records of healthcare visits to inmates in Disciplinary Detention even though there are no requirements regarding such

records in the Act at N.J.S.A. 30:4-82.8.a(7). Please see the Response to Comment 4 regarding the frequency of healthcare visits.

24. COMMENT: The commenter stated that N.J.A.C. 10A:31-17.8 should be modified. Assuming this section relates only to people in Disciplinary Detention, there should be a recommendation for the out-of-cell time to be beyond the five-hour minimum currently required. Specifically, because isolated confinement in a county jail can still involve up to two hours out of a cell or similarly confined space per day (that is, 14, not five, hours per week), the Act requires the facility to maximize the amount of time a person “held in isolated confinement spends outside of the cell by providing, as appropriate, access to recreation, education, clinically appropriate treatment therapies, skill-building activities, and social interaction with staff and other inmates.” N.J.S.A. 30:4-82.8.a(11).

RESPONSE: N.J.A.C. 10A:31-17.8 addresses only what constitutes the minimum amount of out-of-cell recreation time; it does not address total out-of-cell time for inmates in an adult county correctional facility. N.J.A.C. 10A:31-16.1(f) addresses conditions required to confine an inmate in a county correctional facility for 22 hours or more per day.

25. COMMENT: The commenter stated that N.J.A.C. 10A:31-18.1 already appears to provide that the facility Administrator must make the final decision that a person should be placed in Protective Custody, as required in the Act at N.J.S.A. 30:4-82.8.d(4). The commenter suggests that it should also provide that Protective Custody is permissible only where there is no less restrictive intervention, including transfer to the general population of another institution or to a special-purpose housing unit for inmates who face similar threats ... unless the inmate poses a security

risk so great that transferring the inmate would be insufficient to ensure the inmate's safety.

N.J.S.A. 30:4-82.8.d(4)(f). This section, or another in Subchapter 18, should also provide that for people in voluntary protective custody, there must be a record that the placement was with informed, voluntary consent and that there is reasonable cause to believe that confinement is necessary to prevent reasonably foreseeable harm. N.J.S.A. 30:4-82.8.d(4)(a). Those in voluntary protective custody must be notified that they can opt out of that status by providing informed, voluntary, written refusal of that status. N.J.S.A. 30:4-82.8.d(4)(e).

RESPONSE: The Department agrees and feels adding the additional requirements from the Act will bring greater clarity to the rule at N.J.A.C. 10A:31-18.1. The Department will add the following language: "the facility shall keep a written record of a request by an inmate to be placed in voluntary Protective Custody. The inmate may be placed in voluntary Protective Custody only with informed, voluntary consent and when there is reasonable cause to believe that confinement is necessary to prevent reasonably foreseeable harm. When an inmate makes an informed voluntary request for Protective Custody, the correctional facility shall bear the burden of establishing a basis for refusing the request. The facility Administrator shall place an inmate in a less restrictive intervention, including transfer to the general population of another institution or to a special-purpose housing unit for inmates who face similar threats, before placing the inmate in isolated confinement for protection unless the inmate poses a security risk so great that transferring the inmate would be insufficient to ensure the inmate's safety."

26. COMMENT: The commenter stated that N.J.A.C. 10A:31-18.2(a) should clarify that the hearing must be provided upon initial placement and at each 30-day review. At these initial or review

hearings, a person in involuntary Protective Custody must also be provided the right to be represented by counsel and have an independent hearing officer. N.J.S.A. 30:4-82.8.a(4).

RESPONSE: The Department notes that N.J.S.A. 30:4-82.8.a(4) does not address hearing processes for Protective Custody or representation by counsel. The Department offers, for further clarification, that initial placement reviews occur within 72 hours of placement, rather than seven days, as set forth at N.J.A.C. 10A:31-18.2(a) and subsequent Classification Committee reviews occur every 30 days as set forth at N.J.A.C. 10A:31-18.2(c). The protective custody placement reviews are not hearings; disciplinary hearing officers are not members of the review committee because protective custody is not to be used for disciplinary reasons. The commenter is also referred to the Response to Comment 12, regarding the representation by counsel.

27. COMMENT: The commenter states that N.J.A.C. 10A:31-18.2(b) provide that the written record must include a finding by clear and convincing evidence that confinement is necessary to prevent reasonably foreseeable harm and that a less restrictive intervention would not be sufficient to prevent the harm. N.J.S.A. 30:4-82.8.d(4)(b). Furthermore, the commenter states that N.J.A.C. 10A:31-18.3 should provide that the hearing requirements at N.J.A.C. 10A:31-18.2 apply to 30-day reviews, including the right to appear, the right to be represented by counsel, the right to an independent hearing officer, and the right to written findings based on clear and convincing evidence, as set forth at N.J.S.A. 30:4-82.8.a(4).

RESPONSE: Please see the Response to Comments 12 and 21.

28. COMMENT: The commenter suggests that N.J.A.C. 10A:31-18.4(a) should be modified to provide that a person who may be placed or is currently in voluntary Protective Custody may opt out of

that status by providing informed, voluntary, written refusal of that status (see N.J.S.A. 30:4-82.8.e) and that a person otherwise subject to removal from Protective Custody shall be provided with a timely, fair, and meaningful opportunity to contest the removal, N.J.S.A. 30:4-82.8.d.

RESPONSE: Clarification of the rule at N.J.A.C. 10A:31-18.4(a) will be made by replacing “may sign himself or herself out upon completion of” with “opt out of that status by providing informed, voluntary, written refusal of that status on” just prior to the reference to a release form. The Department will also add new N.J.A.C. 10A:31-18.4(d) to include the following language: “an inmate subject to removal from Protective Custody shall be provided with a timely, fair, and meaningful opportunity to contest the removal.”

29. COMMENT: The commenter states that N.J.A.C. 10A:31-18.4(b) should be modified to provide that reviews will occur every 30 days and be subject to the hearing requirements and standards noted above. N.J.S.A. 30:4-82.8.a(4), d(4)(b); and d(4)(f).

RESPONSE: For clarification, the Department will add the following language at N.J.A.C. 10A:31-16.14(A): “taking into consideration the criteria set forth at N.J.A.C.10A:31-16.1(f). As the criteria cited by the commenter already appears at that portion of the Administrative Code text, there is no need to repeat it. “

30. COMMENT: The commenter suggests that the following additional provision should be added to N.J.A.C. 10A:31-18.6 or another section in Subchapter 18: Anyone remaining in Protective Custody, whether voluntary or involuntary, must receive similar opportunities for activities, movement, and social interaction, consistent with their safety and the safety of others, as are people in the general population of the facility. N.J.S.A. 30:4-82.8.d(4)(c).

RESPONSE: N.J.A.C. 10A:31-18.1 will be updated for clarification to add as new subsection (b): “an inmate placed in Protective Custody shall receive similar opportunities for activities, movement, and social interaction, consistent with their safety and the safety of others, as are inmates in the general population of the facility.” (See N.J.S.A. 30:4-82.8.d(4)(c))

Federal Standards Statement

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

Full text of the adoption follows (additions to proposal indicated in boldface with asterisk ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

10A:31-16.1 Disciplinary rules and sanctions

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

(f) Confinement of an inmate in a county correctional facility, for disciplinary, administrative, protective, investigative, medical, or other classification reasons, in a cell or similarly confined space, alone or with other inmates, for 22 hours or more per day, with severely restricted activity, movement, and social interaction shall be permitted only if the following ***general conditions and*** medical examination ***requirements*** and placement hearing conditions are met:

1. Prior to such confinement, inmates shall receive ***a*** preliminary medical and mental health examination conducted by a member of the medical staff within 12 hours of confinement

and a clinical examination within 48 hours of confinement unless staffing levels require that the period for conducting the clinical examination be extended to 72 hours following confinement;

[and]

2. Absent exigent circumstances, unavoidable delays, or reasonable postponements, inmates shall have the right to an initial hearing within 72 hours of placement, and a review every 30 days thereafter; the right to appear at the hearing; the right to be represented at the hearing; an independent hearing officer; and a written statement of reasons for the decision made at the hearing*.[]**; **and***

3. An inmate in Disciplinary Detention must receive a mental health and physical health status examination, conducted by a member of the medical staff as frequently as clinically indicated, but at least once per week. These examinations must occur in a confidential setting outside of the cell, whenever possible. If it is determined that the inmate is a member of a vulnerable population, the inmate shall be immediately removed from Disciplinary Detention.

(g) Any inmate meeting the criteria in this subsection shall not be confined as described *[in]* ***at*** (f) above for any reason, excluding medical quarantines*[,]* ***or*** facility-wide lockdowns*[, or unit-wide lockdowns]*:

1. – 8. (No change from proposal.)

***(h) Placement in Disciplinary Detention must be established by clear and convincing evidence.**

(i) The final decision to place an inmate in Disciplinary Detention must be made by the facility administrator.

(j) There is reasonable cause to believe that the inmate would create a substantial

risk of serious harm to himself, herself, or another and a less restrictive intervention would be insufficient to reduce this risk.

(k) An inmate shall not be placed in Disciplinary Detention or in any other cell or other holding or living space, in any facility, with one or more inmates if there is reasonable cause to believe that there is a risk of harm or harassment, intimidation, extortion, or other physical or emotional abuse to that inmate or another inmate in that placement.*

10A:31-16.6 Major violations and sanctions.

(a)-(c) (No change.)

(d) If an inmate is found guilty of multiple disciplinary charges, he or she may receive up to 15 days Disciplinary Detention for each charge ***and no more than 20 days for a single incident,*** provided that the total time to be served does not exceed 30 days in a 60-day period.

(e) (No change.)

10A:31-16.10 Prehearing Detention

(a) Until the Disciplinary Hearing, the inmate shall remain in his or her existing status, unless the inmate^s ***[constitutes a threat]* *presence in general population poses a danger*** to other inmates, staff members, himself or herself or ***[to the orderly operation of the adult county correctional facility]* *the public***.

(b) If Prehearing Detention is ordered by the shift supervisor, such order shall be reviewed ***within 24 hours by a supervisory employee who was not involved in the initial placement decision and shall also be reviewed*** by the adult county correctional facility Administrator*,*

or designee*,* within 24 hours. Failure to do so shall return the inmate to his or her previous status.

10A:31-16.12 Disciplinary hearing

(a) (No change.)

(b) Inmates confined in Prehearing Detention shall receive a hearing within 72 hours of their placement in Prehearing Detention, absent exigent circumstances*[, and a review every 30 days thereafter, in the absence of exceptional circumstances, unavoidable delays, or reasonable postponements]*.

(c)-(l) (No change from proposal.)

10A:31-16.14 Decision of the Disciplinary Board

(a) At the conclusion of the Disciplinary Hearing, the Disciplinary Board/hearing officer shall issue a written decision ***taking into consideration the criteria set forth at N.J.A.C. 10A:31-16.1(f)***. This decision shall contain:

1. – 8. (No change.)

10A:31-17.1 Placement in Disciplinary Detention

A decision to place an inmate in Disciplinary Detention may be made only by the Disciplinary Board/hearing officer subject to *[review]* ***approval*** by the adult county correctional facility Administrator.

10A:31-18.1 Admission to Protective Custody

(a) An inmate may be placed in Protective Custody only with the approval of the adult county correctional facility Administrator*,* or designee. *** The facility shall keep a written record of a request by an inmate to be placed in voluntary Protective Custody. The inmate may be placed in voluntary Protective Custody only with informed, voluntary consent and when there is reasonable cause to believe that confinement is necessary to prevent reasonably foreseeable harm. When an inmate makes an informed voluntary request for Protective Custody, the correctional facility shall bear the burden of establishing a basis for refusing the request. The facility Administrator shall place an inmate in a less restrictive intervention, including transfer to the general population of another institution, or to a special-purpose housing unit for inmates who face similar threats, before placing the inmate in isolated confinement for protection, unless the inmate poses a security risk so great that transferring the inmate would be insufficient to ensure the inmate's safety.**

(b) An inmate placed in Protective Custody shall receive similar opportunities for activities, movement, and social interaction, consistent with their safety and the safety of others, as are available to inmates in the general population of the facility. (See N.J.S.A. 30:4-82.8.d(4)(c)).*

10A:31-18.4 Release of inmates from Protective Custody

(a) Provided the Classification Committee and the adult county correctional facility Administrator*,* or designee*,* are satisfied that there is no known danger to the inmate's well-being, an inmate who has voluntarily signed himself or herself into Protective Custody may *[sign himself or herself out upon completion of]* ***opt out of that status by providing an informed, voluntary, written refusal of that status on*** a release form.

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

(d) An inmate subject to removal from Protective Custody shall be provided with a timely, fair, and meaningful opportunity to contest the removal.