

CORRECTIONS

THE COMMISSIONER

Close Custody

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

Authorized By: Victoria L. Kuhn 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 2022-115.

Submit written comments by November 5, 2022, to:

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or through email to ARU@doc.nj.gov

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1, N.J.A.C. 10A:5 was scheduled to expire on September 11, 2022. Pursuant to N.J.S.A. 52:14B-5.1.c(2), as the Department of Corrections (“DOC” or “Department”) submitted this notice of proposal to the Office of Administrative Law prior to that date, the chapter expiration date was extended 180 days to March 10, 2023. The Department has reviewed this chapter and, with the exception of the proposed amendments, has determined it to

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

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

Subchapter 1 sets forth general provisions and definitions for Chapter 5, along with rules common to all close custody units. Definitions for two existing close custody units, Protective Custody and Temporary Administrative Housing, are proposed to be added at N.J.A.C. 10A:5-1.2, so that every close custody unit is defined within Chapter 5.

At N.J.A.C. 10A:5-1.3(a)1, the Department proposes a technical change in the second sentence, adding a comma and the word “or” between the words “inmates” and “as.”

In 2020, the Department generalized the provisions set forth at N.J.A.C. 10A:5-1.3 to be applicable to all close custody units, not just the M.C.U., therefore, the Department proposes the following technical changes in keeping with the 2020 amendments: replace “the entire population of the M.C.U.” with “close custody units” in the second sentence at N.J.A.C. 10A:5-1.3; and replace “of the M.C.U.” with “close custody units” at N.J.A.C. 10A:5-1.3(a)1.

At N.J.A.C. 10A:5-1.3(g)5, the Department proposes to replace “emergency housing” with “emergency confinement” in order to draw a clearer reference to the regulation at N.J.A.C. 10A:5-4.1 that describes emergency confinement.

The Department proposes to add the following three new subparagraphs to the list of items permitted in close custody units at N.J.A.C. 10A:5-1.3(h)1, in order to reflect what is actually permitted, as the list was increased to reflect adjustments recently made in the correctional facilities: prescribed medical equipment; approved vendor-provided tablet or similar

vendor-provided communications device, unless privileges are suspended or removed as part of a sanction; and supplies for adequately cleaning the cell.

In order to reflect the fact that inmates assigned to the M.C.U, are also afforded work opportunities, the Department proposes to add “and the Management Control Unit (M.C.U.)” following the reference to Protective Custody (P.C.) at N.J.A.C. 10A:5-1.3(p). A technical correction is also proposed at N.J.A.C. 10A:5-1.3(p)4, by replacing “Protective Custody” with “Restorative Housing Unit,” (R.H.U.), as DOC intended it to apply to the R.H.U. in the 2020 rulemaking.

Subchapter 2 sets forth rules for the Management Control Unit (M.C.U.), including, but not limited to, the Management Control Unit Review Committee (M.C.U.R.C.), assignment to the M.C.U., appeals, and disciplinary actions while in the M.C.U. The staff composition of the M.C.U.R.C. contains a representative from a correctional facility that has a M.C.U. as they possess a working knowledge of the unit. The existing rules refer to those members of staff as from New Jersey State Prison (NJSP) and Edna Mahon Correctional Facility (EMCF), but could be subject to change. Instead of describing a voting member of the M.C.U.R.C. as a person from a specific facility, the Department proposes to describe the individual simply as “correctional facilities with a M.C.U.” at N.J.A.C. 10A:5-2.2.

At N.J.A.C. 10A:5-2.6(d), the Department proposes to add the word “service” following “interpreter” to reflect the fact that an interpreter service is actually used and not necessarily an actual interpreter.

Subchapter 3 includes rules for out-of-cell activities in close custody.

Subchapter 4 provides rules for emergency confinement. The Department has reexamined the Isolated Confinement Restriction Act, N.J.S.A. 30:4-82.5 through 11, with respect to the use of emergency confinement for inmates that are members of a vulnerable

population, and the language at N.J.A.C. 10A:5-4.1. The Department proposes to delete the language at N.J.A.C. 10A:5-4.1(e) and replace it with “[a]n inmate, including a member of the vulnerable population, may be placed in emergency confinement for a period not to exceed 24 hours. Additionally, members of the vulnerable population who have been removed from general population due to him/her receiving disciplinary charge may be placed into Emergency Confinement pending transfer to a Restorative Housing Unit. Absent exigent circumstances these transfers should take place within 20 hours of placement in Emergency Confinement.” The Department believes the replacement language better reflects the intended use of emergency confinement set forth in the aforementioned Act.

Subchapter 5 sets forth rules for Protective Custody, including assignment to the unit, appeals, reviews, and release from Protective Custody. At N.J.A.C. 10A:5-5.1(a)6, the Department proposes to simplify the language by removing the words “on the part of the inmate.” The Department also proposes to incorporate operational efficiencies recently realized with I.C.C. reviews by adding the words “either through video conference or in-person” at N.J.A.C. 10A:5-5.4(a), following “[i]nmates in Protective Custody shall be provided a review every 30 days.”

The Department proposes to replace language at N.J.A.C. 10A:5-5.4(b) to indicate that all inmates placed in Protective Custody on a voluntarily or involuntarily basis are provided with a hearing. The Department also proposes to add language to the end of N.J.A.C. 10A:5-5.4(b) to indicate the frequency of I.C.C. reviews.

The Centralized Reception Assignment Facility (CFAF) closed in 2020 and the intake functions moved to several other facilities with newly formed intake units. The Department proposes to rename references in a more generic manner using the term “intake unit” to avoid

ongoing amendments each time this function is moved to another facility. The Department, therefore, proposes to replace “CRAF” or “CRAF Intake Unit” with “intake unit” at N.J.A.C. 10A:5-5.5(c), 9.5(b), and 9.6(i)4 and (l).

Subchapter 6 sets forth rules for the Prehearing Disciplinary Housing Unit.

Subchapter 7 sets forth rules for the Investigative Housing Unit.

Subchapter 8 sets forth rules for the Adjustment Unit.

Subchapter 9 sets forth rules regarding the Restorative Housing Unit. A technical amendment is proposed replacing administrative segregation with R.H.U. at N.J.A.C. 10A:5-9.5(c), as administrative segregation no longer exists.

Subchapter 10 sets forth rules for Temporary Administrative Housing.

Social Impact

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

Economic Impact

Additional funding is not necessary to implement the requirements of the rules proposed for readoption with amendments. The cost of meeting and maintaining the requirements of the rules proposed for readoption with amendments is met by the Department through the established budget with funds allocated by the State and has no external economic impact.

Federal Standards Statement

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

Jobs Impact

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

Agriculture Industry Impact

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

Regulatory Flexibility Statement

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

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will have no impact on housing affordability and there is an extreme unlikelihood that the rules proposed for readoption with amendments would evoke a change in the average costs associated with housing. The rules proposed for readoption with amendments concern the close custody housing of inmates found guilty of disciplinary infractions, as used by the New Jersey Department of Corrections.

Smart Growth Impact Development Analysis

The rules proposed for readoption with amendments will have no impact on the achievement of smart growth and there is an extreme unlikelihood the rules proposed for readoption with amendments will evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The rules proposed for readoption with amendments concern close custody, as used by the New Jersey Department of Corrections and governmental entities.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department of Corrections has evaluated this rulemaking and determined that it will not have an impact on pretrial detention or sentencing. Close custody does not directly impact probation and potentially parole, and has been implemented and updated in compliance with related State laws. Accordingly, no further analysis is required.

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

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

SUBCHAPTER 1. GENERAL PROVISIONS

10A:5-1.2 Definitions

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

...

“Protective Custody” means confinement to a secure unit designated to restrict or limit an inmate’s activities and contact with others, in order to provide protection to the inmate from injury or harm, actually threatened, or reasonably believed to exist based on events, investigative reports, reports from an informant(s), or other reliable source(s) of information.

...

“Temporary Administrative Housing” (T.A.H.) means the 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 concern for the safety of the inmate, or others, or in emergent situations in which general population and other close custody units are not applicable.

10A:5-1.3 Rules common to all close custody units

(a) Special custodial responsibilities are as follows:

1. [Because of] **Due to** the increased need for close security within the 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] **all close custody units**. Spot-checks of cells may be conducted at any time.

2. (No change.)

(b)-(f) (No change.)

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

1.-4. (No change.)

5. 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] **confinement** and pre-hearing disciplinary housing; and

6. (No change.)

(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.-viii. (No change.)

ix. Postage stamps; [and]

x. Reading and writing materials[.];

xi. Prescribed medical equipment;

xii. Department-approved media player, tablet, or similar contractor-provided electronic communications service provider or vendor-provided device, unless privileges are suspended or removed as part of a sanction; and

xiii. Supplies for adequately cleaning the cell.

2.-4. (No change.)

(i)-(o) (No change.)

(p) Work opportunities shall be provided to inmates in Protective Custody (P.C.) **and the Management Control Unit (M.C.U.)** in keeping with appropriate security considerations.

1. -3 (No change.)

4. Inmates in [Protective Custody] **a Restorative Housing Unit** 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)-(s) (No change.)

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

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

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

1. A representative from [New Jersey State Prison Administration] **a correctional facility with a M.C.U.;**

2.-6. (No change.)

(b) The Administrator or designee **of a correctional facility with a M.C.U.** shall assign the Committee members with the exception of the chairperson as established [in] **at** (a) above.

(c) The Committee members may include employees of [New Jersey State Prison.] **a correctional facility with a M.C.U.**

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

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

(d) Illiterate inmates or inmates otherwise demonstrating a need for assistance shall receive the assistance of a consenting inmate, or a staff member assigned to this function by the M.C.U.R.C. An interpreter **service** shall be utilized if needed.

(e)-(w) (No change.)

SUBCHAPTER 4. EMERGENCY CONFINEMENT

10A:5-4.1 Emergency Confinement

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

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

(e) An inmate, including a member of the vulnerable population, may be placed in Emergency Confinement for a period not to exceed 24 hours. Additionally, members of the vulnerable population who have been removed from general population due to receiving a disciplinary charge may be placed in Emergency Confinement, pending transfer to a Restorative Housing Unit. Absent exigent circumstances, these transfers should take place within 20 hours of placement in Emergency Confinement.

SUBCHAPTER 5. PROTECTIVE CUSTODY

10A:5-5.1 Assignment to Prehearing Protective Custody or admission to a Protective Custody Unit

(a) An inmate may be placed in Protective Custody by any of the following means:

1.-5. (No change.)

6. Involuntarily, [on the part of the inmate] in accordance with the provisions of this subchapter.

(b) – (c) (No change.)

10A:5-5.4 Review of all inmates in Protective Custody units

(a) Inmates in Protective Custody shall be provided a review every 30 days, **either through video conference or in-person**, by the Institutional Classification Committee (I.C.C.).

(b) [An inmate who is] **In addition to (a) above, each inmate** placed in Protective Custody [involuntarily] shall[, in every case, have] **be provided** an in-person hearing, in accordance with procedures specified at N.J.A.C. 10A:5-5.2 and 5.3, **a review bi-annually (twice per year) or more often, if necessary, by the Institutional Classification Committee (I.C.C.)**.

(c)-(d) (No change.)

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

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

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

(d) (No change.)

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

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

(a) (No change.)

(b) If an inmate receives a Restorative Housing Unit sanction, the inmate shall be referred to [the Centralized Reception Assignment Facility (CRAF)] **an intake unit** 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] **a R.H.U.**

(d)-(i) (No change.)

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

(a)-(h) (No change.)

(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.-3. (No change.)

4. Referred to the [CRAF Intake Unit] **intake unit** for transfer to a correctional facility, as determined by the S.A.R.C.

(j)-(k) (No change.)

(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] **intake unit** who shall be responsible for immediately arranging transportation of the inmate to the designated correctional facility.