

## **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.

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### **CORRECTIONS**

#### **THE COMMISSIONER**

##### **County Correctional Facilities**

##### **Proposed Amendments: N.J.A.C. 10A:31-16.1, 16.6, 16.12, 17.2, and 18.2**

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 2020-069.

Submit written comments by September 18, 2020, to:

Kathleen Cullen  
Administrative Rules Unit  
Office of the Commissioner  
New Jersey Department of Corrections  
PO Box 863  
Trenton, New Jersey 08625-0863  
or via email to [ARU@doc.nj.gov](mailto:ARU@doc.nj.gov)

The agency proposal follows:

#### **Summary**

The proposed amendments are intended to promulgate and incorporate 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, that apply to correctional facilities based on several existing county correctional facility housing arrangements and hearing processes set forth at N.J.A.C. 10A:31.

The Department of Corrections (Department) proposes to incorporate the requirements for healthcare evaluations and timing for hearings while in restrictive confinement into N.J.A.C. 10A:31-16.1(f) by adding that confinement of more than 22 hours per day with severely restricted activity is permitted only if the hearing requirements and medical examinations requirements are met.

Proposed new N.J.A.C. 10A:31-16.1(g) sets forth the required exclusion of individual inmates with characteristics defined in the Act as members of a vulnerable population from confinement of more than 22 hours per day with severely restricted activity.

The existing rules at N.J.A.C. 10A:31-16.6 and 17.2 set forth that disciplinary detention may be imposed as a sanction for up to 15 days for each disciplinary charge provided that the total time to be served does not exceed 30 days. The Department proposes to add the phrase “in a 60-day period” at the end of N.J.A.C. 10A:31-16.6(d) and 17.2(b) in keeping with restrictions in the Act. In addition, the Department proposes new N.J.A.C. 10A:31-17.2(c) to clarify that an inmate shall not be placed in disciplinary detention for more than 20 consecutive days, or for more than 30 days during any 60-day period.

By adding the phrase “provided the inmate remains in general population pending the hearing” to the first sentence following the word “violation” and ending the first sentence at N.J.A.C. 10A:31-16.12(a), the Department proposes to make clear that inmates will remain in general population when disciplinary hearings that take place within seven calendar days of an alleged violation.

In order to comply with hearing requirements and related housing limitations in the Act, the Department proposes the following amendments to N.J.A.C. 10A:31-16.12(b) dealing with hearings in prehearing detention; replace “three days” with “72 hours”; replace “including weekends and holidays, unless there are” with “absent exigent circumstances, and a review every 30 days thereafter, in the absence of” and delete the last sentence as it is not in keeping with provisions in the Act.

N.J.A.C. 10A:31-16.12(l) addresses instances in which further investigation is required that necessitates postponement of the disciplinary hearing. The Department proposes to replace “for up to 48 hours” with “but the inmate shall not be held in Prehearing Detention for more than a total of 72 hours” for Prehearing Detention cases and to replace “all other Hearings” with “when inmates remain in General Population awaiting a disciplinary hearing” to ensure compliance with the Act.

In order to clarify that the hearing procedure for placement in involuntary Protective Custody is indeed a hearing and not a review at N.J.A.C. 10A:31-18.2(a), the Department proposes to replace the word “review” with “conduct a hearing for all” and to replace “seven days” with “72 hours of placement” at the end of the sentence for compliance with hearing requirements in the Act.

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

### **Social Impact**

The proposed amendments bring the rules into alignment with portions of N.J.S.A. 30:4-82.5 through 11, which restrict the use of isolated confinement in correctional facilities and require less restrictive sanctions for infractions when practicable.

The Department anticipates a positive social impact on the general public and inmate population resulting from the proposed amendments. The law enforcement community may, however, feel that some process changes resulting from the amendments 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 proposed amendments can be managed consistent with safety concerns.

### **Economic Impact**

Additional funding will be necessary to implement the proposed amendments 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 amendments will require, at a minimum, additional funding from the counties 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 previously allocated by the counties may be insufficient to meet the added demands of the Isolated Confinement Restriction Act.

### **Federal Standards Statement**

The proposed 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 proposed amendments are not subject to any Federal statutes, requirements, or standards; therefore, a Federal standards analysis is not required.

### **Jobs Impact**

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

### **Agriculture Industry Impact**

The proposed amendments will have no impact on the agriculture industry.

### **Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping, and other compliance requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments only impose 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 amendments shall have no impact on housing affordability and there is an extreme unlikelihood that the amendments proposed would evoke a change in the average costs associated with housing. The proposed amendments concern changes to inmate discipline brought about by requirements of the Act and the Department's efforts to effectuate less restrictive interventions for disciplinary infractions in the New Jersey county 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 amendments will have no impact on the achievement of smart growth and there is an extreme unlikelihood the proposed 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 proposed amendments concern changes to inmate discipline brought about by requirements of the Act and the Department's efforts to effectuate less restrictive interventions for disciplinary infractions in the New Jersey county correctional facilities, 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 proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

#### SUBCHAPTER 16. DISCIPLINARY PROCEDURES

##### 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 medical examination and placement hearing conditions are met:**

**1. Prior to such confinement, inmates shall receive 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.

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

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 at 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. 30:4-27.2;
5. Has a serious medical condition that cannot effectively be treated in isolated confinement;
6. Is pregnant, is in the postpartum period, has recently suffered a miscarriage, or terminated a pregnancy;
7. Has a significant auditory or visual impairment; or
8. Is perceived to be lesbian, gay, bisexual, transgender, or intersex.

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 provided that the total time to be served does not exceed 30 days **in a 60-day period.**

(e) (No change.)

10A:31-16.12 Disciplinary hearing

(a) The inmate shall be entitled to a hearing within seven calendar days of the alleged violation, [including] **provided the inmate remains in general population pending the hearing. Calculation of the seven days shall include** weekends and holidays, unless such hearing is prevented by exceptional circumstances, unavoidable delays, or reasonable postponements. Should the seventh day fall on a Saturday, Sunday, or holiday, the hearing shall be held on the business day immediately following the weekend or holiday.

(b) Inmates confined in Prehearing Detention shall receive a hearing within [three calendar days] **72 hours** of their placement in Prehearing Detention, [including weekends and holidays, unless there are] **absent exigent circumstances, and a review every 30 days thereafter, in the absence of** exceptional circumstances, unavoidable delays, or reasonable postponements. [Should the third day fall on a Saturday, Sunday or holiday, the hearing shall be held on the business day immediately following the weekend or holiday.]

(c)-(k) (No change.)

(l) Should further investigation be required, the Disciplinary Hearing may be postponed by the Disciplinary Board/hearing officer [for up to 48 hours] **but the inmate shall not be held in Prehearing Detention for more than a total of 72 hours** for Prehearing Detention cases and for seven days for [all other Hearings] **when inmates remain in general population awaiting a disciplinary hearing.**

SUBCHAPTER 17. DISCIPLINARY DETENTION

10A:31-17.2 Time spent in Disciplinary Detention

(a) (No change.)

(b) Inmates found guilty of multiple disciplinary charges may receive up to 15 days Disciplinary Detention for each charge provided that the total time to be served does not exceed 30 days **in a 60-day period.**

**(c) An inmate shall not be placed in Disciplinary Detention for more than 20 consecutive days, or for more than 30 days during any 60-day period.**

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

#### SUBCHAPTER 18. PROTECTIVE CUSTODY

10A:31-18.2 Hearing procedure for involuntary placement to Protective Custody

(a) The adult county correctional facility's Classification Committee shall [review] **conduct a hearing for all** involuntary Protective Custody placements within [seven days] **72 hours of placement.**

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