

## **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**

##### **Inmate Discipline**

**Proposed Repeal and New Rule: N.J.A.C. 10A:4-2.3**

**Proposed Amendments: N.J.A.C. 10A:4-1.1, 1.3, 2.1, 4.1, 5.1, 7.1, 7.2, 7.4, 7.5, 7.6, 9.5, 9.11, 9.13, 9.14, 9.17, 9.18, 9.24, 9.25, 11.2, and 11.7**

**Proposed New Rules: N.J.A.C. 10A:4-3.3 and 10A:16-14**

**Proposed Repeals: N.J.A.C. 10A:4-1.2, 1.4, and 2.2**

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 2020-067.

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, repeals, and new rules are intended 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 82.11 (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 Corrections' (Department) rules required by the Act, the Department has determined to address each of these areas in separate rulemaking actions. 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. The changes involve the repeal of some rules, amendments of others, and the proposal of new rules.

In this rulemaking action, the Department proposes to amend rules for inmate discipline to effectuate greater inmate rehabilitation, reduce restrictive sanctions when practicable, and introduce a one-time Drug Diversion Program for drug and substance-related infractions. Inmates may, at any time, request treatment for substance use disorders. The new program is a non-punitive alternative offered to inmates for one time when found guilty of committing drug and/or substance-related infractions.

At N.J.A.C. 10A:4-1.1(a), the Department proposes to alter procedural and process-oriented language describing the purpose of the chapter with language more suited to administrative rules by deleting N.J.A.C. 10A:4-1.1(a)1, and to amend recodified paragraph (a)1 by replacing the existing language with “sets forth for inmates and staff, a comprehensive code of offenses and sanctions that are consistent with the correctional objectives of the Department of Corrections and the correctional facility.” In addition, N.J.A.C. 10A:4-1.1(a)5 and 6, 2.1(d), and 2.3(b) and 1.2 and 2.2 are proposed for deletion and repeal, respectively, as they are better suited for internal documentation and management procedures. For the same reason the Department proposes to replace the existing language at N.J.A.C. 10A:4-2.3 to indicate that rules are promulgated as set forth at N.J.A.C. 10A:1-1.5.

The Department proposes to repeal N.J.A.C. 10A:4-1.4, 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:4-1.4, Forms, the Department further proposes to generalize all references to form numbers and names at N.J.A.C. 10A:4-5.1(p)10, 7.1(a), 7.2(b), (c), and (d), 7.4(a), 7.5(b), 7.6(b), 9.5(d)1, 9.11(b)2, 3, 4, and 5, 9.13(e), 9.14(f), 9.25, 11.2(b) and (f), and 11.7(a)2. The Department proposes to delete the definition of “administrative close custody supervision unit” as it is terminology no longer used by the Department.

Some of the amendments are proposed in order to include the Drug Diversion Program in Chapter 4 rules at N.J.A.C. 10A:4-1.3, to add a new definition for the Drug Diversion Program; at N.J.A.C. 10A:4-4.1(a) to replace “five categories” with “six categories” to indicate the addition of Category F, the Drug Diversion Program; and to add a description of Category F. Category F is comprised of prohibited acts relocated from Category B, in order to provide inmates with a one-time opportunity for a 60-day suspension of sanctions for infractions related to drug and substance abuse coupled with an opportunity for treatment. If the opportunity for treatment is refused or not completed, the infractions will be sanctioned as Category B infractions.

The Department proposes to replace the cross-reference at N.J.A.C. 10A:4-4.1(a) to “N.J.A.C. 10A:9-1.13” with “N.J.A.C. 10A:9-2.13” based on changes proposed in a separate rulemaking.

In order to implement the requirements set forth in the Act, several rulemakings have been proposed in order to implement less restrictive sanctions. The Department proposed to delete the Administrative Segregation housing unit at N.J.A.C. 10A:5, Close Custody, and instead to implement several new housing units within close custody. Included in the other rulemaking are the Adjustment Unit and the Restorative Housing Unit (See N.J.A.C. 10A:5-8.1 and 10A:5-9.1, respectively). In keeping with those housing unit modifications, the Department proposes to adjust sanctions in this rulemaking for the more serious offenses that result in a change to inmate housing.

- At N.J.A.C. 10A:4-4.1(a)1, the Department proposes three modifications: 1) replace the sanction of no less than 181 days and no more than 365 in Administrative Segregation with five to 15 days in an adjustment unit and up to 365 days in a Restorative Housing Unit (R.H.U.) and replace the second reference in the sentence to Administrative Segregation with R.H.U.; 2) replace the phrase “the” inmate shall receive one or more of the sanctions listed at [N.J.A.C. 10A:4-5.1\(e\)](#)” with the inmate may receive one or more of the less restrictive sanctions listed at [N.J.A.C. 10A:4-5.1\(e\)](#)”; and 3) add a new sentence stating that the hearing officer and/or the Administrator shall consider a less restrictive sanction based on the nature of the offense and the inmate infraction history.

- At N.J.A.C. 10A:4-4.1(a)2, the Department proposes three modifications: 1) replace the sanction of no less than up to 91 and no more than 180 in Administrative Segregation with up to 120 days in a Restorative Housing Unit (R.H.U.) and replace the second reference in the sentence to Administrative Segregation with R.H.U.; 2) replace the phrase “the inmate shall receive one or more of the sanctions listed at [N.J.A.C. 10A:4-5.1\(f\)](#)” with “the inmate may receive one or more of the less restrictive sanctions listed at [N.J.A.C. 10A:4-5.1\(f\)](#)”; and 3) add a new sentence stating that the hearing officer and/or the Administrator shall consider a less restrictive sanction based on the nature of the offense and the inmate infraction history.
- At N.J.A.C. 10A:4-4.1(a)3, the Department proposes to replace the phrase “any offense in Category C can result in a sanction of no less than 31 days and no more than 90 days of administrative segregation in addition to one or more of the sanctions listed at [N.J.A.C. 10A:4-5.1\(j\)](#)” with “any offense in Category C may result in a sanction of one or more of the sanctions listed at [N.J.A.C. 10A:4-5.1\(j\)](#),” thereby removing the close custody housing unit sanction entirely.
- At N.J.A.C. 10A:4-4.1(a)4, the Department proposes to replace the word “can” with “may” and remove the phrase “either zero or 30 days of administrative segregation in addition to” leaving the sanction for this category of offenses as “one or more of the sanctions listed at [N.J.A.C. 10A:4-5.1\(l\)](#).”
- At N.J.A.C. 10A:4-4.1(a)5, the Department proposes to replace the word “can” with “may,” thereby providing more flexibility to the Disciplinary Hearing Officer in applying sanctions. In addition, the Department proposes to delete the last sentence dealing with Administrative Segregation, as it no longer exists.

New N.J.A.C. 10A:4-4.1(a)6 is proposed to define the details of the new Category F and the Drug Diversion Program that may result from a finding of guilt for infractions of the prohibited acts listed. It should be noted that inmates always have the opportunity to request substance abuse treatment outside of the disciplinary process. The new Drug Diversion Program involves the Disciplinary Hearing Officer (DHO) offering the inmate a one-time opportunity to voluntarily participate in the program. If the inmate chooses to participate in the Drug Diversion Program, inmate eligibility for participation is assessed during the 60-day period in which sanctions are suspended. It should be noted that the DHO cannot suspend Zero Tolerance sanctions, such as loss of contact visits. Inmates found to be eligible for treatment will be placed in one of the substance-abuse treatment programs following a recommendation from medical staff. Inmates that decline to participate or are otherwise ineligible for Category F will receive Category B level sanction(s) for infractions of the prohibited acts listed for Category F. However, if the inmate chooses to participate, but fails to adhere to the requirements of the Drug Diversion Program during the 60-day suspended sanction period, the suspended sanctions will be imposed. If the program is not completed, the sanction(s) will be imposed without consideration of time served in the Drug Diversion Program, but consideration will be given to the possibility of imposing less restrictive sanctions based on the nature of the offense and the inmate infraction history. The program is offered to inmates on a one-time-only basis and future offenses are not eligible for the Drug Diversion Program or suspension of sanctions.

In an effort to rebalance the sanctions for infractions of prohibited acts based on the severity of offense with the amended and relaxed sanctions included at N.J.A.C. 10A:4-5.1, the Department proposes to relocate the prohibited acts below from one category of offense to another, as listed.

- The Department proposes to amend Category A prohibited acts at N.J.A.C. 10A:4-4.1(a)1, as follows:  
\*.009: add the words “while assigned to a secure correctional facility” at the end of the description to identify where the infraction occurred;

- \*.050: add the words “or abuse” to the end of the description, as this prohibited act is intended to encompass not only sexual assault but also sexual abuse; and
- \*.151: replace “setting a fire” with “arson,” to more clearly identify the deliberate nature of the act.
- The Department proposes to combine prohibited act \*.251 rioting and \*.252 encouraging others to riot, so that prohibited act \*.252 will be deleted.
- The Department proposes to relocate the following prohibited acts from N.J.A.C. 10A:4-4.1(a)2 in Category B to Category A at N.J.A.C. 10A:4-4.1(a)1:
  - \*.006: extortion, blackmail, protection: demanding or receiving favors, money or anything of value in return for protection against others, to avoid bodily harm, or under threat of informing;
  - \*.008: abuse/cruelty to animals;
  - \*.010: engaging, participating, and/or recruiting others to participate in an activity(ies) related to a security threat group;
  - \*.155: adulteration or tampering of any food or drink;
  - \*.201: possession or introduction of an explosive, incendiary device, or any ammunition;
  - \*.215: possession with intent to distribute or sell prohibited substances such as drugs, intoxicants, or related paraphernalia;
  - \*.216: distribution or sale of prohibited substances, such as drugs, intoxicants, or related paraphernalia;
  - \*.253: engaging in or encouraging a group demonstration or work stoppage; and
  - \*.704: perpetrating frauds, deceptions, confidence games, riots, or escape plots.
- The Department proposes to relocate prohibited act “\*. 102 attempting or planning escape” from N.J.A.C. 10A:4-4.1(a)3 Category B to Category A at N.J.A.C. 10A:4-4.1(a)1.
- The Department proposes to relocate the following prohibited acts from N.J.A.C. 10A:4-4.1(a)3 Category C to Category B at N.J.A.C. 10A:4-4.1(a)2:
  - \*.051 engaging in sexual acts with others;
  - \*.053 indecent exposure; and
  - \*.254 refusing to work, or to accept a program or housing unit assignment.
- The Department proposes to relocate prohibited act \*. 256 refusing to obey an order of any staff member from N.J.A.C. 10A:4-4.1(a)4 Category D to Category B at N.J.A.C. 10A:4-4.1(a)2.
- The Department proposes to relocate the following prohibited acts from N.J.A.C. 10A:4-4.1(a)2 Category B to Category F at N.J.A.C. 10A:4-4.1(a)6.
  - \*.203 possession or introduction of any prohibited substances such as drugs, intoxicants, or related paraphernalia not prescribed for the inmate by the medical or dental staff;
  - \*.204 use of any prohibited substances such as drugs, intoxicants, or related paraphernalia not prescribed for the inmate by the medical or dental staff;
  - \*.205 misuse of authorized medication;
  - \*.258 refusing to submit to testing for prohibited substances;
  - \*.259 failure to comply with an order to submit a specimen for prohibited substance testing (see N.J.A.C. 10A:3-5);
  - \*.261 tampering with a test specimen;
  - \*.551 making intoxicants, alcoholic beverages, or prohibited substances such as narcotics and controlled dangerous substances or making related paraphernalia; and
  - \*.552 being intoxicated.
- The Department proposes to add prohibited act \*.803 attempting to commit, aiding another person to commit, or making plans to commit any Category B offense to Category F at N.J.A.C. 10A:4-4.1(a)6.
- At N.J.A.C. 10A:4-4.1(a)1, the Department proposes to add the words “in a secure facility” to the end of prohibited acts \*.101, to differentiate that escape from a secure facility will be sanctioned as a Category A offense while adding a prohibited act for the same type of infraction in Category C, \*.101A for escape from a residential community release program or furlough as a Category C offense.

The Department also proposes to add the words “in a secure facility” to the end of prohibited act \*.207 to differentiate that possession of money or currency (in excess of \$50.00), unless specifically authorized in a secure facility will be sanctioned as a Category B offense while adding a new prohibited act and \*.207A for possession of currency over \$50.00 in a residential community release program, will be sanctioned as a Category E offense.

- The Department proposes to add new prohibited act \*.900, in Category B, for failure to complete the new proposed Drug Diversion Program and to add two more new prohibited acts, \*.055 and \*.056 in Category B at N.J.A.C. 10A:4-4.1(a)2 in order to sanction inmate behaviors that are not in compliance with Prison Rape Elimination Act (PREA) standards. The new prohibited acts in Category B follow:
  - \*.055: making sexual threats to another;
  - \*.056: sexual contact, involving the intentional touching, directly or indirectly, through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person, excluding contact incidental to a physical altercation; and
  - \*.900 failure to complete a Drug Diversion Program.
- The Department proposes to delete Category B prohibited act \*.255 at N.J.A.C. 10A:4-4.1(a)2xxiv., encouraging others to refuse to work or to participate in work stoppage because it duplicates the behavior prohibited at act \*.253.
- In Category C, at N.J.A.C. 10A:4-4.1(a)3, the Department proposes to remove the word “threats” from prohibited act .052, as new prohibited act \*.055 in Category B at N.J.A.C. 10A:4-4.1(a)4 has been proposed to address sexual threats to another and to add new prohibited act \*.057 sexual harassment involves repeated and/or unwelcomed sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature in Category C, in compliance with PREA standards.
- The Department proposes to replace the word “using” with “use of” as a technical change at N.J.A.C. 10A:4-4.1(a)4, Category E prohibited act .304, to specify the prohibition is for use of abusive or obscene language to a staff member.

The Department proposes to remove the words “committed at the Prison Complex” in the heading of N.J.A.C. 10A:4-5.1 to reflect current practices as the sanctions apply to infractions committed by inmates regardless of where committed, unless otherwise stated.

The Department proposes to replace references to administrative segregation with Restorative Housing Unit (R.H.U.) at N.J.A.C. 10A:4-5.1(a), (e), and (g), as the Department proposed to repeal administrative segregation rules at N.J.A.C. 10A:5-3.1 through 3.20 in a separate rulemaking. The R.H.U. was proposed in that same rulemaking at N.J.A.C. 10A:5-9.1 through 9.6. It must be noted in the context of this rulemaking and proposed new references to the R.H.U. that the new proposed R.H.U., is one of the many steps the Department is taking 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.

At N.J.A.C. 10A:4-5.1(d), the Department proposes to add the designation of Category B, C, and F, to the first sentence in order to differentiate how repeat occurrences of specific infractions in each of those categories will be sanctioned at the next highest level in order to discourage repeat infractions of the more serious prohibited acts. The Department also proposes to add a new second sentence in order to set forth that repeat occurrences of infraction(s) in Category D or E, in separate incidents, may be sanctioned as a Category C offense(s).

Proposed new N.J.A.C. 10A:4-5.1(e)8, (g)8, (i)8, (k)8, and (m)8 state “loss of tablet or similar handheld electronic device for up to 30 calendar days,” which is proposed as a new, less restrictive sanction.

While the most serious infractions must be addressed with serious sanctions, each incident must be addressed on a case-by-case basis. Therefore, the Department proposes to give the Disciplinary Hearing Officer flexibility when imposing sanctions and to amend N.J.A.C. 10A:4-5.1(e) to make the first and last sentences permissive, rather than mandatory; replace the phrase “no less than 181 days and no more than 365 days of administrative segregation per incident” with “up to 5 to 15 days placement in an Adjustment Unit per incident, not to exceed 30 days in a 60-day period due to the offense causing substantial risk of harm to self or others, and up to 365 days in a Restorative Housing Unit placement per incident”; and to change “following sanctions” with “less restrictive sanctions” in the final sentence.

At N.J.A.C. 10A:4-5.1(c) and (g), the Department proposes to replace the word “shall” with the word “may” in the last sentence and add the phrase “less restrictive sanctions” after the word “following,” to provide for some Disciplinary Hearing Officer flexibility when imposing sanctions for Category B infractions. In addition, the Department proposes to replace the phrase “sanction of no less than 91 days and no more than 180 of administrative segregation” with “Restorative Housing sanction of up to 120 days” to relax the sanctions for Category B infractions.

At N.J.A.C. 10A:4-5.1(i), the Department proposes a technical amendment and to replace “can render the offender subject to 31 through 90 days of administrative segregation and one or more of” with “may result in’ the following sanctions.” It should be noted that this proposed amendment removes administrative segregation as a sanction for Category C infractions.

At N.J.A.C. 10A:4-5.1(k), the change proposed at subsection (i) is also proposed. It should be noted that this proposed amendment also removes administrative segregation as a sanction for Category D infractions.

At N.J.A.C. 10A:4-5.1(m), the Department proposes to replace the words “shall render the offender subject to any one or more of” with “may result in’ the following sanctions,” which relaxes the obligation to imposed one or more of the lesser sanctions listed.

One of the less restrictive sanctions listed for categories B, C, and D infractions includes the loss of commutation time and the Department proposes to reduce those sanctions as follows:

- At N.J.A.C. 10A:4-5.1(g)2, replace 365 calendar days with 180 calendar days;
- At N.J.A.C. 10A:4-5.1(i)2, replace 60 calendar days with 90 calendar days; and
- At N.J.A.C. 10A:4-5.1(m)2, replace 60 calendar days with 30 calendar days.

As part of the implementation of the Drug Diversion Program for Category F infractions, the Department proposes to set forth, at N.J.A.C. 10A:4-5.1(o), how and when sanctions are suspended and/or applied as follows:

- Inmates found guilty of a Category F infraction may be sanctioned with one or more of the Category B sanctions;
- Sanctions consistent with those otherwise imposed for Category B may be suspended for 60 days if the inmate agrees to participate in the prescribed treatment program;
- If requirements of the treatment program are not met during the 60-day suspended sanction period, the suspended sanctions shall be imposed;
- If the program is not completed the inmate shall be subject to the Category B sanction(s) without consideration for time served in the treatment program; and
- The hearing officer and/or the Administrator shall consider a less restrictive sanction based on the nature of the offense and the inmate infraction history.

Recodified N.J.A.C. 10A:4-5.1(t) contains a list of administrative actions that may be taken when appropriately approved and the Department proposes to add “and /or tablet or similar electronic device” to paragraph (t)6.

In order to provide a second review process and due consideration for appropriate safety and security risk factors when imposing the most serious and restrictive sanctions, new N.J.A.C. 10A:4-9.17(e) and (f) are proposed.

At N.J.A.C. 10A:4-9.18(a), the Department proposes to provide more flexibility in suspending sanctions to the Adjustment Committee (AC) or Disciplinary Hearing Officer (DHO) by removing the reference to Category C, D, and E, which will then authorize the AC or DHO to suspend any sanction in any category (A through F), for a period of 60 days when, in their opinion, such action is warranted by the particular circumstances of the case.

The Department proposes to add the words “or by Disciplinary Staff,” to the list of parties or entities that shall provide a copy of the written statement to the inmate following a disciplinary hearing at N.J.A.C. 10A:4-9.24(a) to provide functional flexibility within correctional facilities. In addition, the Department proposes to remove the phrase “in the Disciplinary Hearing Officer's/Adjustment Committee's records and” from N.J.A.C. 10A:4-9.24(b) to reflect current operational practices involving where copies of disciplinary decisions are maintained.

The Department proposes to add new N.J.A.C. 10A:16-14, Substance Use Disorder Treatment Services, to codify the availability of an existing voluntary substance use disorder treatment program that has been provided as healthcare service for many years. known as the Substance Use Disorder Treatment Program at N.J.A.C. 10A:16-14.1. In addition, the Department proposes to add new N.J.A.C. 10A:16-14.2, Drug diversion program, to codify the healthcare aspects of the Drug Diversion Program proposed at N.J.A.C. 10A:4-1.3, 4.1(a)6, and 5.1(g) and (n).

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 new rules, amendments, and repeals bring the two subchapters 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 and require less restrictive sanctions for infractions when practicable.

The Department anticipates a positive impact on the general public and inmate population as a result of the proposed rulemaking, as well as the introduction of a one-time Drug Diversion Program for drug and substance related infractions from the general public and inmate population. The law enforcement community may, however, feel that some process changes resulting from this 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 proposed changes 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 cost of additional medical services, increased custody, social service, and reporting analyst staff, along with changes to the report-generating software and system changes. The budget allocated by the State is insufficient to meet the added demands of the “Isolated Confinement Restriction Act.”

### **Federal Standards Statement**

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

### **Jobs Impact**

The proposed amendments, new rules, and repeals will generate additional jobs as identified in the Economic Impact section.

### **Agriculture Industry Impact**



The proposed amendments, new rules, 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, 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 amendments, new rules, and repeals 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 new rules, amendments, and repeals shall have no impact on housing affordability and there is an extreme unlikelihood that the proposed amendments, new rules, and repeals would evoke a change in the average costs associated with housing. The proposed amendments, new rules, and repeals concern changes to inmate discipline brought about by the requirements of the Act and the Department's efforts to effectuate less restrictive interventions for disciplinary infractions 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, and repeals will have no impact on the achievement of smart growth and there is an extreme unlikelihood the proposed amendments, new rules, and repeals 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, new rules, and repeals concern changes to inmate discipline brought about by the requirements of the Act and the Department's efforts to effectuate less restrictive interventions for disciplinary infractions in New Jersey State 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 rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10A:4-1.2, 1.4, 2.2, and 2.3.

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

## **CHAPTER 4**

### **INMATE DISCIPLINE**

#### **SUBCHAPTER 1. GENERAL PROVISIONS**

##### **10A:4-1.1 Purpose**

(a) The purpose of this chapter is to:

[1. Establish policies to assure that inmate discipline and control are consistent with the correctional objectives of the Department of Corrections and the correctional facility;]

[2.] **1.** [Establish] **Set forth for inmates and staff**, a comprehensive code of offenses and [set of permissible punishments in order that prescribed behavior may be known by both inmates and staff] **sanctions that are consistent with the correctional objectives of the Department of Corrections and the correctional facility**;

[3.] **2.** [Establish] **Set forth** administrative due process safeguards in the disciplinary process as required by the United States Supreme Court in [Wolff v. McDonnell] **Wolff v. McDonnell**, 418 [U.S.] **U.S.** 539



(1974) and the New Jersey Supreme Court in [Avant v. Clifford] *Avanti v. Clifford*, 67 [N.J.] *N.J.* 496 (1975); **and**

[4.] **3.** [Enforce] **Provide guidelines for the enforcement of rules** and [impose] **the imposition of** appropriate sanctions for infractions[;].

[5. Stimulate application of disciplinary procedures which encourage future voluntary acceptance of certain behavior limitations that are necessarily being imposed upon the inmate;

6. Build and maintain morale among inmates and between staff and inmates by providing impartial and fair procedures throughout the disciplinary process.]

#### **10A:4-1.2 (Reserved)**

#### 10A:4-1.3 Definitions

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

...

["Administrative Close Supervision Unit" means a close custody unit to which an inmate may be assigned because of one or more disciplinary infractions or other administrative considerations.]

...

**"Drug Diversion Program" is a substance use disorder treatment program offered to inmates on a voluntary one-time-only basis, as set forth for Category F offenses at N.J.A.C. 10A:4-4.1(a)6 and 3.14.**

...

#### **10A:4-1.4 (Reserved)**

### SUBCHAPTER 2. PUBLICATION OF RULES

#### 10A:4-2.1 Notification of inmates about rules and regulations

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

[(d) When a correctional facility has a large number of inmates in the population who speak a foreign language, the rules shall be printed and presented verbally in the foreign language.

(e) For illiterate inmates or inmates otherwise unable to read or write due to a physical/medical inability, the rules shall be verbally communicated and assistance shall be provided to those inmates unable to provide written acknowledgement.]

#### **10A:4-2.2 (Reserved)**

### SUBCHAPTER 3. INMATE RIGHTS AND RESPONSIBILITIES

#### **10A:4-3.2 (Reserved)**

#### **10A:4-3.3 Promulgation of rules**

**See N.J.A.C. 10A:1-1.5 for the rule concerning provision of notice of inmates about the promulgation of rules.**

### SUBCHAPTER 4. INMATE PROHIBITED ACTS

#### 10A:4-4.1 Prohibited acts

(a) An inmate who commits one or more of the following numbered prohibited acts shall be subject to disciplinary action and a sanction that is imposed by a Disciplinary Hearing Officer or Adjustment Committee with the exception of those violations disposed of by way of an on-the-spot correction.

Prohibited acts preceded by an asterisk (\*) are considered the most serious and result in the most severe sanctions (see N.J.A.C. 10A:4-5, Schedule of Sanctions for Prohibited Acts). Prohibited acts are further subclassified into [five] **six** categories of severity (Category A through [E] **F**) with Category A being the most severe and Category E the least severe **and Category F containing an opportunity for inmates**

**found guilty of specified infractions to participate in a substance-use disorder treatment program known as the Drug Diversion Program, if eligible.** These categories correspond to the categories of sanctions at N.J.A.C. 10A:4-5 and the categories in the severity of offense scale at N.J.A.C. 10A:9-1.13] **2.13.**

1. Category A: A finding of guilt for any offense in Category A shall result in a sanction of [no less than 181 days and no more than] **five to 15 days in an Adjustment Unit and up to 365 days** [of administrative segregation] **in a Restorative Housing Unit (R.H.U.)** per incident and one or more of the sanctions listed at N.J.A.C. 10A:4-5.1(e), unless a medical or mental health professional determines that the inmate is not appropriate for [administrative segregation] **R.H.U.** placement. Where a medical or mental health professional has made such a determination, the inmate [shall] **may** receive one or more of the **less restrictive** sanctions listed at N.J.A.C. 10A:4-5.1(e). **The Disciplinary Hearing Officer and/or the Administrator shall consider a less restrictive sanction based on the nature of the offense and the inmate infraction history.**

i.-iii. (No change.)

iv. **\*.006 extortion, blackmail, protection: demanding or receiving favors, money, or anything of value in return for protection against others, to avoid bodily harm, or under threat of informing**

[iv.] v. (No change in text.)

vi. **\*.008 abuse/cruelty to animals**

[v.] vii. (No change in text.)

[v.] viii. **\*.009 misuse, possession, distribution, sale, or intent to distribute or sell, an electronic communication device, equipment, or peripheral that is capable of transmitting, receiving, or storing data and/or electronically transmitting a message, image, or data that is not authorized for use or retention while assigned to a secure correctional facility** (see "electronic communication device" definition at N.J.A.C. 10A:1-2.2)

ix. **\*.010 engaging, participating, and/or recruiting others to participate in an activity(ies) related to a security threat group**

[vi.] x. (No change in text.)

[vii.] xi. **\*.050 sexual assault or abuse**

[viii.] xii. **\*.101 escape from a secure facility**

xiii. **\* 102 attempting or planning escape**

[ix.] xiv. **\*.151 [setting a fire] arson**

xv. **\*.155 adulteration or tampering of any food or drink**

xvi. **\*.201 possession or introduction of an explosive, incendiary device, or any ammunition**

[x.] xvii. (No change in text.)

xviii. **\*.215 possession with intent to distribute or sell prohibited substances such as drugs, intoxicants, or related paraphernalia**

xix. **\*.216 distribution or sale of prohibited substances, such as drugs, intoxicants, or related paraphernalia**

[xi.] xx. **\*.251 rioting or encouraging others to riot**

[xii.] **\*.252 encouraging others to riot**

xxi. **\*.253 engaging in or encouraging a group demonstration or work stoppage**

[xiii.] xxii. (No change in text.)

xxiii. **\*.704 perpetrating frauds, deceptions, confidence games, riots, or escape plots**

[xiv.] xxiv. (No change in text.)

2. Category B: A finding of guilt for any offense in Category B shall result in a sanction of [no less than 91 days and no more than 180] **up to 120 days** [of administrative segregation] **in a Restorative Housing Unit (R.H.U.)** per incident and one or more of the sanctions listed at N.J.A.C. 10A:4-5.1(g), unless a medical or mental health professional determines that the inmate is not appropriate for

[administrative segregation] **R.H.U.** placement. Where a medical or mental health professional has made such a determination, the inmate [shall] **may** receive one or more of the **less restrictive** sanctions listed at N.J.A.C. 10A:4-5.1(f). **The Disciplinary Hearing Officer and/or the Administrator shall consider a less restrictive sanction based on the nature of the offense and the inmate infraction history.**

i.-ii. (No change.)

[iii. \*.006 extortion, blackmail, protection: demanding or receiving favors, money or anything of value in return for protection against others, to avoid bodily harm, or under threat of informing

iv. \*.008 abuse/cruelty to animals

v. \*.010 participating in an activity(ies) related to a security threat group]

Recodify existing vi.-vii. as **iii.-iv.** (No change in text.)

**v. \*.051 engaging in sexual acts with others**

**vi. \*.053 indecent exposure**

[viii.] **vii.** (No change in text.)

**viii \*.055 making sexual threats to another**

**ix. \*.056 sexual contact, involving the intentional touching, directly or indirectly, through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person, excluding contact incidental to a physical altercation.**

[ix. \*.102 attempting or planning escape]

x.-xii. (No change.)

[xiii. \*.155 adulteration of any food or drink

xiv. \*.201 possession or introduction of an explosive, incendiary device, or any ammunition

xv. \*.203 possession or introduction of any prohibited substances such as drugs, intoxicants or related paraphernalia not prescribed for the inmate by the medical or dental staff

xvi. \*.204 use of any prohibited substances such as drugs, intoxicants, or related paraphernalia not prescribed for the inmate by the medical or dental staff

xvii. \*.205 misuse of authorized medication]

[xviii.] **xiii. \*.207 possession of money or currency (in excess of \$50.00), unless specifically authorized in a secure facility**

Recodify existing xix.-xx. as **xiv.-xv.** (No change in text.)

[xxi. \*.215 possession with intent to distribute or sell prohibited substances such as drugs, intoxicants, or related paraphernalia

xxii. \*.216 distribution or sale of prohibited substances such as drugs, intoxicants, or related paraphernalia

xxiii. \*.253 engaging in or encouraging a group demonstration

xxiv. \*.255 encouraging others to refuse to work or to participate in work stoppage

xxv. \*.258 refusing to submit to testing for prohibited substances

xxvi. \*.259 failure to comply with an order to submit a specimen for prohibited substance testing (see N.J.A.C. 10A:3-5)]

**xvi. \*.254 refusing to work, or to accept a program or housing unit assignment**

**xvii. \*.256 refusing to obey an order of any staff member**

[xxvii.] **xviii.** (No change in text.)

[xxviii. \*.261 tampering with a test specimen]

Recodify existing xxix.-xxxi. as **xix.-xxi.** (No change in text.)

[xxxii. \*.551 making intoxicants, alcoholic beverages, or prohibited substances such as narcotics and controlled dangerous substances or making related paraphernalia

xxxiii. \*.552 being intoxicated

xxxiv. \*.704 perpetrating frauds, deceptions, confidence games, riots, or escape plots]

Recodify existing xxxv.-xxxvii. as **xxii.-xxiv.** (No change in text.)

**xxv. \*.900 failure to complete a Drug Diversion Program**

3. Category C: A finding of guilt for any offense in Category C [can] **may** result in a sanction of [no less than 31 days and no more than 90 days of administrative segregation in addition to] one or more of the sanctions listed at N.J.A.C. 10A:4-5.1(j).

i.-ii. (No change.)

[iii. .051 engaging in sexual acts with others]

[iv.] **iii.** .052 making sexual proposals [or threats] to another

[v. .053 indecent exposure]

**iv. .057 Sexual harassment involves repeated and/or unwelcomed sexual advances, request for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature**

**v. .101A Escape from a residential community release program or furlough**

vi.-viii. (No change.)

[ix. .254 refusing to work, or to accept a program or housing unit assignment]

Recodify existing x.-xxiv. as **ix.-xxiii.** (No change in text.)

4. Category D: A finding of guilt for any offense in Category D [can] **may** result in a sanction of [either zero or 30 days of administrative segregation in addition to] one or more of the sanctions listed at N.J.A.C. 10A:4-5.1(l).

i.-iii. (No change.)

[iv. \*.256 refusing to obey an order of any staff member]

Recodify existing v.-x. as **iv.-ix.** (No change in text.)

5. Category E: A finding of guilt for any offense in Category E [shall] **may** result in a sanction of one or more of the sanctions listed at N.J.A.C. 10A:4-5.1(n). Administrative segregation does not apply to Category E.

**i. .207A possession of money or currency (in excess of \$50.00), unless specifically authorized, in a residential community release program**

Recodify existing i.-ii. as **ii.-iii.** (No change in text.)

[iii.] **iv** .304 [using] **use of** abusive or obscene language to a staff member

Recodify existing iv.-xvi. as **v.-xvii.** (No change in text.)

**6. Category F: A finding of guilt for any offense in Category F may result in placement in a treatment program if recommended by appropriate medical staff and/or imposition of one or more of the sanctions for infractions of Category B prohibited acts. If the Disciplinary Hearing Officer offers a substance abuse treatment program/Drug Diversion Program, the Disciplinary Hearing Officer shall also impose sanctions consistent with Category B, which may be suspended for 60 days if the inmate agrees to participate in the prescribed Drug Diversion Program, except for loss of contact visits, which may not be suspended by the Disciplinary Hearing Officer. If the inmate fails to adhere to the requirements of the Drug Diversion Program during the 60-day suspended sanction period, the Disciplinary Hearing Officer shall impose the suspended sanctions. If the prescribed Drug Diversion Program is not completed the inmate shall be subject to the Category B sanction(s) without consideration for time served in the Drug Diversion Program. The Disciplinary Hearing Officer and/or the Administrator shall consider a less restrictive sanction based on the nature of the offense and the inmate infraction history. The Drug Diversion Program is offered to inmates found guilty of Category F infractions on a one-time-only basis. An inmate who repeats offenses in Category F is not eligible for the Drug Diversion Program and the associated suspension of sanctions. If an inmate commits a repeated offense of a Category F infraction, the infraction then becomes subject to Category B sanctions.**

**i. \*.203 possession or introduction of any prohibited substances, such as drugs, intoxicants, or related paraphernalia not prescribed for the inmate by the medical or dental staff**

- ii. \*.204 use of any prohibited substances, such as drugs, intoxicants, or related paraphernalia not prescribed for the inmate by the medical or dental staff
- iii. \*.205 misuse of authorized medication
- iv. \*.258 refusing to submit to testing for prohibited substances
- v. \*.259 failure to comply with an order to submit a specimen for prohibited substance testing (see N.J.A.C. 10A:3-5)
- vi. \*.261 tampering with a test specimen
- vii. \*.551 making intoxicants, alcoholic beverages, or prohibited substances, such as narcotics and controlled dangerous substances or making related paraphernalia
- viii. \*.552 being intoxicated
- ix. \*.803 attempting to commit, aiding another person to commit, or making plans to commit any Category B offense

## SUBCHAPTER 5. SCHEDULE OF SANCTIONS FOR PROHIBITED ACTS

### 10A:4-5.1 Schedule of sanctions for prohibited acts [committed at the Prison Complex]

(a) The maximum [administrative segregation] **Restorative Housing Unit (R.H.U.)** sanction for any prohibited act or acts resulting from a single incident shall not exceed 365 days.

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

(d) Repeat occurrences of a specific infraction(s) **in Category B, C, and F**, in separate incidents, may be considered for sanctioning in the next highest category of the current offense at the discretion of the Disciplinary Hearing Officer. **Repeat occurrences of an infraction(s) in Category D or E, in separate incidents, may be considered as a Category C offense for sanctioning in the next highest category of the current offense at the discretion of the Disciplinary Hearing Officer.**

(e) A finding of guilt for any offense in Category A [shall] **may** result in a sanction of [no less than 181 days and no more than 365 days of administrative segregation] **up to five to 15 days placement in an Adjustment Unit per incident, not to exceed 30 days in a 60-day period due to the offense causing substantial risk of harm to self or others, and up to 365 days Restorative Housing Unit (R.H.U) placement** per incident and one or more of the following sanctions, unless a medical or mental health professional determines that the inmate is not appropriate for [administrative segregation] **R.H.U.** placement. Where a medical or mental health professional has made such determination, the inmate [shall] **may** receive one or more of the following **less restrictive** sanctions:

1.-5. (No change.)

6. Confiscation; [and/or]

7. Up to 14 hours extra duty, to be performed within a maximum of two weeks[.]; **and/or**

**8. Loss of tablet or similar handheld electronic device for up to 30 calendar days.**

(f) (No change.)

(g) A finding of guilt for any offense in Category B [shall] **may** result in a [sanction of no less than 91 days and no more than 180 days of administrative segregation] **Restorative Housing Unit sanction of up to 120 days** per incident and one or more of the following sanctions, unless a medical or mental health professional determines that the inmate is not appropriate for [administrative segregation] **R.H.U.** placement. Where a medical or mental health professional has made such determination, the inmate [shall] **may** receive one or more of the following **less restrictive** sanctions:

1. (No change.)

2. Loss of commutation time up to [365] **180** calendar days, subject to confirmation by the Administrator;

3.-5. (No change.)

6. Confiscation; [and/or]

7. Up to 14 hours extra duty, to be performed within a maximum of two weeks[.]; **and/or**

**8. Loss of tablet or similar handheld electronic device for up to 30 calendar days.**

(h) (No change.)

(i) A finding of guilt **for** any offense in Category C [can render the offender subject to 31 through 90 days of administrative segregation and one or more of] **may result in** the following sanctions:

1. (No change.)

2. Loss of commutation time up to [60] **90** calendar days, subject to confirmation by the Administrator;

3.-5. (No change.)

6. Confiscation; [and/or]

7. Up to 14 hours extra duty, to be performed within a maximum of two weeks[.]; **and/or**

**8. Loss of tablet or similar handheld electronic device for up to 30 calendar days.**

(j) (No change.)

(k) A finding of guilt any offense in Category D [shall render the offender subject to 0 or 30 days of Administrative Segregation and one or more of] **may result in** the following sanctions:

1.-5. (No change.)

6. Confiscation; [and/or]

7. Up to 10 hours extra duty, to be performed within a maximum of two weeks[.]; **and/or**

**8. Loss of tablet or similar handheld electronic device for up to 30 calendar days.**

(l) (No change.)

(m) A finding of guilt any offense in Category E [shall render the offender subject to any one or more of] **may result in** the following sanctions:

1. (No change.)

2. Loss of commutation time up to [60] **30** calendar days, subject to confirmation by the Administrator;

3.-5. (No change.)

6. Confiscation; [and/or]

7. Up to 14 hours extra duty, to be performed within a maximum of two weeks[.]; **and/or**

**8. Loss of tablet or similar handheld electronic device for up to 30 calendar days.**

(n) (No change.)

**(o) A finding of guilt for any offense in Category F may result in placement in a treatment program if recommended by appropriate medical staff and/or a sanction of one or more of the sanctions for infractions of Category B prohibited acts. If the Disciplinary Hearing Officer imposes a Drug Diversion Program, the Disciplinary Hearing Officer shall also impose sanctions consistent with Category B, which may be suspended for 60 days if the inmate agrees to participate in the prescribed Drug Diversion Program, except that loss of contact visits may not be suspended by the Disciplinary Hearing Officer. If the inmate fails to adhere to the requirements of the Drug Diversion Program during the 60-day suspended sanction period, the Disciplinary Hearing Officer shall impose the suspended sanctions. If the prescribed Drug Diversion Program is not completed, the inmate shall be charged with prohibited act \*.900 and Category B sanction(s) applied without consideration for time served in the Diversion Program. The Disciplinary Hearing Officer and/or the Administrator shall consider a less restrictive sanction based on the nature of the offense and the inmate infraction history (see N.J.A.C. 10A:16-14.2).**

[ (o) ] **(p)** Pursuant to the "Zero Tolerance Drug/Alcohol Policy" as defined [in] **at** N.J.A.C. 10A:1-2.2, a finding of guilt to any of the following prohibited acts shall result in termination of contact visit privileges and ineligibility for consideration for any custody status lower than medium custody until after contact visit privileges are reinstated.

1.-9. (No change.)

10. \*.708 refusal to submit to a search (when the inmate has been given advance verbal notice that the search is being conducted due to reasonable suspicion related to possession, sale, or use of prohibited substances, such as drugs, alcohol, or intoxicants and the advance notice has been documented [on Form 259 Disciplinary Report]); and

11. (No change.)

[(p)] **(q)** Pursuant to the "Zero Tolerance Drug/Alcohol Policy" as defined [in] **at** N.J.A.C. 10A:1-2.2, a finding of guilt to prohibited act \*.205 misuse of authorized medication (such as narcotics and controlled dangerous substances), as determined by the Disciplinary Hearing Officer or Adjustment Committee, may result in termination of contact visit privileges and ineligibility for consideration for any custody status lower than medium custody until after contact visit privileges are reinstated.

Recodify existing (q)-(r) as **(r)-(s)** (No change in text.)

[(s)] **(t)** In addition to the sanctions in this section, administrative action may be taken when approved by the Institutional Classification Committee upon the recommendation of the Disciplinary Hearing Officer/Adjustment Committee or the Administrator or designee. Such administrative action may include, but not be limited to, the following:

1.-5. (No change.)

6. Recommending loss of telephone, radio, [and/or] television **and/or tablet or similar handheld electronic device** privileges for up to one year;

7.-10. (No change.)

## SUBCHAPTER 7. ON-THE-SPOT CORRECTION

### 10A:4-7.1 On-the-spot disciplinary report/adjudication

(a) When a violation of a prohibited act that is considered minor has occurred, the staff member witnessing the violation shall prepare [Part I of Form 253-I] **an** On-The-Spot Disciplinary Report/Adjudication and distribute copies as follows:

1.-2. (No change.)

### 10A:4-7.2 Conference/appeal

(a) (No change.)

(b) An inmate may waive the right to attend his or her conference or the inmate may forfeit that right if the inmate's behavior justifies his or her removal from the conference. In either case, the reasons for the inmate's absence shall be documented [on Form 253-I].

(c) The custody staff supervisor shall indicate on [Part 2 of Form 253-I] **the** On-The-Spot Disciplinary Report/Adjudication whether the conference was held and enter on the form the other data pertaining to the results of the conference.

(d) At the conclusion of the conference, the inmate shall receive a completed copy of [Form 253-I] **the** On-The-Spot Disciplinary Report/Adjudication. Should the inmate be found guilty, [ the remaining] **a** copy of [Form 253-I] **the report** shall be submitted to the Correction Major [who shall determine where Form 253-I shall be maintained].

(e) (No change.)

### 10A:4-7.4 Imposition of sanction

(a) If the custody staff supervisor concurs with the [Form 253-I,] On-The-Spot Disciplinary Report/Adjudication and proposed sanction, the proposed sanction shall be imposed within 24 hours of the conference. If no conference is requested, the sanction shall be imposed within 24 hours of the review by the custody staff supervisor.

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

### 10A:4-7.5 Record of sanction

(a) (No change.)

(b) Records of the on-the-spot sanctions [(Form 253-I)] shall be retained separately from the inmate's classification folder and in accordance with the internal management procedures of the correctional facility.



10A:4-7.6 Referral and/or increase of an on-the-spot correction infraction

(a) (No change.)

(b) A **disciplinary** report shall be filed [on Form 259, Disciplinary Report] containing all the required information. Copies of all relevant documents shall then be forwarded to the Disciplinary Hearing Officer or Adjustment Committee Chairperson with a statement of reasons for the referral and any recommendations.

## SUBCHAPTER 9. DISCIPLINARY PROCEDURES

10A:4-9.5 Investigation

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

(d) The Disciplinary Hearing Officer/Adjustment Committee shall determine the need to obtain a psychological/psychiatric evaluation based upon the nature of the infraction, the determination from the Mental Health Unit regarding whether the inmate is a special needs inmate, and/or any other relevant information.

1. In those cases where a psychological/psychiatric evaluation is necessary, the Disciplinary Hearing Officer/Adjustment Committee shall forward [Form HSU-010, Request for Psychological/Psychiatric Evaluation] **a request for psychological/psychiatric evaluation** to the [Lead Psychologist] **lead psychologist**.

2. (No change.)

(e)-(h) (No change.)

10A:4-9.11 In absentia hearings

(a) (No change.)

(b) The following procedural process shall apply at all disciplinary hearings conducted in absentia, which will enable the Disciplinary Hearing Officer or Adjustment Committee to ensure that the inmate has been given every opportunity to be present for his or her disciplinary hearing.

1. (No change.)

2. A custody staff member shall deliver to the inmate who refuses to appear [Form 252] **an Inmate Disciplinary Hearing Attendance Refusal Notice** that includes the following statement: "I voluntarily refuse to appear at this hearing. I understand that the hearing will be held in my absence."

3. The custody staff member shall advise the inmate that refusal to appear at the disciplinary hearing may result in an incomplete understanding by the Disciplinary Hearing Officer or Adjustment Committee of the circumstances surrounding the charges lodged against the inmate. If the inmate still refuses to appear at the disciplinary hearing, the inmate shall be requested to sign [Form 252] **the Inmate Disciplinary Hearing Attendance Refusal Notice** immediately after the statement [noted above in] **set forth at (b)2 above**.

4. In the event the inmate refuses to sign his or her name where designated on [Form 252] **the Inmate Disciplinary Hearing Attendance Refusal Notice** and still refuses to appear, [Form 252] **the notice** shall be returned to the Disciplinary Hearing Officer or Adjustment Committee Chairperson [and the following statement on Form 252 shall be acknowledged by] **indicating that the inmate refused to sign and will contain the** signature of the investigating custody staff member[:].

["Inmate refuses to sign

....."]

Signature of

Custody Staff Member]

5. The Disciplinary Hearing Officer or Adjustment Committee shall ensure that the following statement shall be included in the inmate statement section of the Adjudication of Disciplinary Report [form]: "No statement taken as the inmate refused to appear at the hearing."

10A:4-9.13 Opportunity to call a witness(es) and present evidence

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

(e) If the Disciplinary Hearing Officer or Adjustment Committee denies the request of the inmate or counsel substitute to call a witness(es), have access to certain information, or to ask certain questions, the reasons for the denial shall be specifically set forth on [form 259A] **the** Adjudication of Disciplinary Report.

(f)-(g) (No change.)

#### 10A:4-9.14 Confrontation and cross-examination

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

(f) If the Disciplinary Hearing Officer denies the request of the inmate or counsel substitute to call a witness(es) or ask certain cross-examination questions, the reasons for the denial shall be specifically set forth on [Form 259A,] **the** Adjudication of Disciplinary Report.

#### 10A:4-9.17 Disciplinary sanctions

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

**(e) Prior to imposing disciplinary sanctions for Category A and B infractions, the Disciplinary Hearing Officer and/or the Administrator shall consider a less restrictive sanction based on the nature of the offense and the inmate infraction history.**

**(f) All sanctions/placements in the Adjustment Unit and/or Prehearing Disciplinary Housing shall be reviewed and approved by the facility Administrator, or designee, within 24 hours.**

#### 10A:4-9.18 Suspending sanctions

(a) The Adjustment Committee or Disciplinary Hearing Officer may suspend a sanction(s) imposed upon an inmate for a violation of a prohibited act [in Category C, D, and E] when, in their opinion, such action is warranted by the particular circumstances of the case for 60 calendar days.

(b)-(d) (No change.)

#### 10A:4-9.24 Disciplinary decision

(a) After the hearing has been completed, a written statement of the fact-findings shall be given to the inmate by the Disciplinary Hearing Officer, [or] **the** Adjustment Committee Chairperson, **or by Disciplinary Staff**. This statement shall include evidence relied upon, the decision and the reason for the disciplinary action taken, unless doing so would, in the discretionary opinion of the Disciplinary Hearing Officer or Adjustment Committee Chairperson, jeopardize correctional facility security. The written statement shall also indicate the reason for refusing to call a witness or to disclose items of evidence whether it be for irrelevance, lack of necessity, or other special circumstances presented in individual cases. When an inmate has been denied the opportunity for confrontation and cross-examination, the reason for such denial shall be entered in the record and made available to the inmate.

(b) A copy of the disciplinary decision shall be kept [in the Disciplinary Hearing Officer's/Adjustment Committee's records and] in the inmate's classification folder, unless the inmate has been adjudicated not guilty of the charge(s), in which case, the records of the charge(s) shall be expunged from the inmate's classification folder.

(c) (No change.)

#### 10A:4-9.25 Discipline record card [(Form 254-I)]

For the purpose of assisting the Disciplinary Hearing Officer or Adjustment Committee in determining the appropriate sanction to impose, each correctional facility shall have available at the hearing a Discipline Record Card [(Form 254-I)] for each inmate. This card shall accompany the inmate should he/she be transferred to another correctional facility.

## SUBCHAPTER 11. APPEALS OF DISCIPLINARY DECISIONS

#### 10A:4-11.2 Processing appeal

(a) (No change.)

(b) Upon submission of [Form 256-I] **the appeal request**, the person accepting the appeal form shall sign, date, and note the time [on the original and copies] in the inmate's presence[. A] **and provide a copy** [of the form shall be given] to the inmate.

(c)-(e) (No change.)

(f) Inmates unable to complete [Form 256-I Appeal of Disciplinary Decision] **the appeal request** may request assistance from another inmate in preparing the [form. When Form 256-I has been completed by an inmate other than the inmate who received the charge,] **request** (the name of the preparer should appear on the [form] **request**).

#### 10A:4-11.7 Notification of inmate on appeal results

(a) In all cases, the inmate shall be notified in writing of the results of the review of the inmate's appeal and the reasons therefor.

1. (No change.)

2. In all other cases, or if the sanctions have been suspended, the Administrator, or designee, shall respond in writing to the inmate within seven business days of receipt of the appeal. [Form 256-II, Disposition of Disciplinary Appeal shall be used for this purpose.]

(b) Copies of the **written** decision shall also be distributed to the Adjustment Committee or the Disciplinary Hearing Officer and placed in the inmate's classification folder. Other copies may be distributed as determined to be necessary by the Administrator or designee.

(c) (No change.)

### CHAPTER 16 HEALTH SERVICES

#### SUBCHAPTER 14. [(Reserved)] **SUBSTANCE USE DISORDER TREATMENT SERVICES**

##### **10A:16-14.1 Substance Use Disorder Treatment Program**

(a) Inmates may, at any time, request treatment for substance use disorder on a voluntary basis.

1. The Department substance use disorder and addiction services staff and the healthcare provider will assess the inmate and, if the inmate is eligible, will develop an individualized treatment plan for each inmate.

##### **10A:16-14.2 Drug Diversion Program**

(a) Inmates found guilty of Category F infractions at N.J.A.C. 10A:4-4.1(a)6 will be offered the opportunity to participate in a one-time only Drug Diversion Program (See N.J.A.C. 10A:4-5.1(n)). The program is a 60-day intervention pathway for drug rehabilitation and related behavioral modification. It is offered as a less punitive alternative to the sanctions found at N.J.A.C. 10A:4-5.1(g) with the intention of enrollment in a clinical Drug Diversion Program. During the 60-day interventional pathway:

1. The Department substance use disorder and addiction services staff and the healthcare provider will assess the inmate and develop an individualized treatment plan for each inmate referred by the Disciplinary Hearing Officer (see N.J.A.C. 10A:4-5.1(n));

2. Inmates shall comply with all components of the prescribed treatment plan;

3. Inmate noncompliance with all components of the prescribed treatment plan shall result in removal from the Drug Diversion Program and referral to the Disciplinary Hearing Officer at the correctional facility in which the infraction was committed (see N.J.A.C. 10A:4-5.1(n)); and

4. Upon completion of the Drug Diversion Program, a report will be forwarded to the facility in which the infraction was committed and taken into consideration by the Disciplinary Hearing Officer or Adjustment Committee for disposition of the originally imposed sanctions.

(b) Inmates may, at any time, request treatment for substance use disorder on a voluntary basis.

