

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

Administrative Segregation; Administrative Segregation Level Program; Special Administrative Segregation Review Committee (S.A.S.R.C.); Selection of Staff

Proposed Amendments: N.J.A.C. 10A:1-2.2; 10A:4-1.3 and 9.17; 10A:5-1.1, 1.3, 2.29, 3.1, 3.2, 3.3, 3.6, 3.7, 3.8, 3.10 through 3.18, and 3.20; and 10A:9-3.1, 3.14, and 5.2

Proposed Repeal: N.J.A.C. 10A:5-3.19

Authorized By: Gary M. Lanigan, 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 2013-002.

Submit written comments by March 8, 2013 to:

Melissa H. DiGregorio, Acting Supervisor
Administrative Rules Unit
Office of the Commissioner
New Jersey Department of Corrections
PO Box 863
Trenton, New Jersey 08625-0863

The agency proposal follows:

Summary

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

Several amendments have been made throughout the proposed rules for purposes of clarification, to correct minor errors in grammar and punctuation, to improve sentence structure, and to replace certain terms with more appropriate or accurate words.

N.J.A.C. 10A:1-2.2, Definitions, is the designated section for the meaning of words and terms when used in N.J.A.C. 10A:1 through 10A:30. The definition for “administrative segregation” has been amended to include new language to clarify that the removal of an inmate is from the general population of a correctional facility. Additionally, the reference to “long-term” close custody unit has been deleted because inmates do not always spend long-term periods of time in these units.

N.J.A.C. 10A:4-1.3 sets forth the meaning of words and terms used in N.J.A.C. 10A:4, Inmate Discipline. The reference to “long-term” has been deleted from the definition for “Administrative Close Supervision Unit” because inmates do not always spend long-term periods of time in these units. The definition for “Adjustment Committee” has been amended to include new language to achieve consistency with the existing definition at N.J.A.C. 10A:5-1.3.

The provisions at N.J.A.C. 10A:5-1.1 set forth the purpose of the rules contained in N.J.A.C. 10A:5, Close Custody Units. The word “segregation” has been deleted and replaced with the phrase “close supervision” at N.J.A.C. 10A:5-1.1(a)4 to refer to the accurate name of the unit in which administrative segregation inmates are placed. This change is also proposed throughout the rule text. The meanings of words and terms used in N.J.A.C. 10A:5 are established at N.J.A.C. 10A:5-1.3. In the definition for “Adjustment Committee,” the phrase “violations or prohibited acts” has been replaced with “violation of prohibited acts” for clarification. The definition for “administrative segregation” has been deleted as it is redundant with the same definition at N.J.A.C. 10A:1-2.2. In the existing definition for “Administrative Segregation Level Program” at N.J.A.C. 10A:5-1.3, the phrase “three level program” has been replaced with “two-level program” to reflect the recent restructuring of the Administrative Segregation Level Program (Program) in which Level 3 of the Program was eliminated. Accordingly, the description of Level 3 of the Program has been deleted from the definition.

N.J.A.C. 10A:5-3.2 sets forth rules for the Special Administrative Segregation Review Committee (S.A.S.R.C.). At subsection (b), the phrase “when unavailable, a” when referring to the Associate Administrator/Assistant Superintendent/Captain has been deleted. Such language is unnecessary as one of the implied functions of a designee is to act in the absence of a staff member. For the purposes of ensuring adequate representation on the S.A.S.R.C., the reference to “a six-month rotating basis” relative to the service of S.A.S.R.C. voting members has been deleted. General language has been deleted and amendments have been made to each paragraph of subsection (b) to include more specific references to Department staff who shall be voting members of the S.A.S.R.C. to include an Associate Administrator or Assistant Superintendent from a facility designated by the Director, a representative from the Central Reception and Assignment Facility, and a representative from the Division of Operations in place of “a representative of the correctional facility,” “another prison complex facility,” “and “a youth complex facility,” respectively. The specific reference to a “six-month or extended” term at subsection (c) has been deleted to establish that the term of service of the chairperson shall be determined by the Director.

New language has been added to subsection (j) to include a medical condition as a factor the S.A.S.R.C. shall consider when determining if an inmate should be released from the Administrative Close Supervision Unit.

Due to the Department restructuring of certain committee and staff responsibilities, the reference at subsection (n) to the Inter-Institutional Classification Committee, represented by the acronym of I.I.C.C., has been deleted and replaced with a reference to the correct entity, the Institutional Classification Committee, represented by the acronym of I.C.C. The guidelines by which an inmate is assigned to a correctional facility are those established for the I.C.C. rather than the I.I.C.C.

N.J.A.C. 10A:5-3.19 regarding selection of staff is proposed for repeal because the rule falls under the purview of the New Jersey Civil Service Commission (CSC) rather than the Department of Corrections. Further, the CSC has replaced the New Jersey Department of Personnel which no longer exists and is the entity referenced in N.J.A.C. 10A:5-3.19.

Social Impact

The use of close custody units has proven useful in the maintenance of discipline, safety, and the orderly operation of correctional facilities in the New Jersey Department of Corrections and will continue to assist administrators in the management of the inmate population.

The restructuring of the Program to include a two-level program that implements a restricted, tiered privilege, and amenities system has been developed as the method by which inmates serving administrative segregation sanctions may be reintegrated back into the general population after successful demonstration that they can interact appropriately in a normal correctional facility setting. The elimination of the least restrictive level of the Program would enhance operational effectiveness throughout the Department by discouraging offenders from participating in violent, assaultive, disruptive, and/or chronic behavior through further restriction of inmate possessions, activities, privileges, and amenities.

The proposed amendments provide guidance to Department staff by clarifying existing rules relative to the composition and responsibilities of the S.A.S.R.C. when reviewing the level assignment of inmates assigned to the Program.

Although there may be individuals who oppose these proposed amendments regarding the restructuring of the Program, the proposed amendments are intended to achieve the successful reintegration into the general population of those inmates serving administrative segregation sanctions.

Economic Impact

Additional funding is not necessary to implement the requirements of the proposed amendments and repeal. The cost of meeting and maintaining the requirements of the proposed amendments and repeal is met by the Department through the established budget with funds allocated by the State.

Federal Standards Statement

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

Jobs Impact

The proposed amendments and repeal will cause neither the generation nor the loss of any jobs.

Agriculture Industry Impact

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

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments and repeal 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 proposed amendments and repeal affect inmates, the New Jersey Department of Corrections, and governmental entities responsible for the enforcement of the proposed amendments and repeal.

Housing Affordability Impact Analysis

The proposed amendments and repeal shall have no impact on housing affordability. The proposed amendments and repeal concerning administrative segregation, the Program, and the S.A.S.R.C. affect inmates, the New Jersey Department of Corrections, and governmental entities responsible for the enforcement of the proposed amendments and repeal.

Smart Growth Development Impact Analysis

The proposed amendments and repeal will have no impact on smart growth development because the proposed amendments and repeal do not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey. The proposed amendments and repeal concerning administrative segregation, the Program, and the S.A.S.R.C. affect inmates, the New Jersey Department of Corrections, and governmental entities responsible for the enforcement of the proposed amendments and repeal.

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

CHAPTER 1

ADMINISTRATION, ORGANIZATION, AND MANAGEMENT

SUBCHAPTER 2. GENERAL PROVISIONS

10A:1-2.2 Definitions

The following words and terms, when used in N.J.A.C. 10A:1 through 10A:30, shall have the following meanings unless the context clearly indicates otherwise:

“Administrative [Segregation] **segregation**” [shall] means removal of an inmate from the general population **of a correctional facility** to a [long-term] close custody unit because of one or more disciplinary infractions or other administrative considerations.

...

CHAPTER 4

INMATE DISCIPLINE

SUBCHAPTER 1. GENERAL PROVISIONS

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 [long term] close custody unit to which an inmate may be assigned because of one or more disciplinary infractions or other administrative considerations.

“Adjustment Committee” [shall] means the committee within a **correctional** facility that is authorized to hear and adjudicate inmate violations of prohibited acts.

...

SUBCHAPTER 9. DISCIPLINARY PROCEDURES

10A:4-9.17 Disciplinary sanctions

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

(c) In accordance with N.J.A.C. 10A:9-3.14, inmates shall be reviewed and scored on the Reclassification Instrument upon a finding of guilt to a prohibited act(s) when:

1. A sanction imposed by the Disciplinary Hearing Officer includes a referral to the I.C.C., except if [Administrative Segregation] **administrative segregation** is part of the imposed sanction;

2.-3. (No change.)

(d) (No change.)

CHAPTER 5

CLOSE CUSTODY UNITS

SUBCHAPTER 1. GENERAL PROVISIONS

10A:5-1.1 Purpose

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

1. – 3. (No change.)

4. Operating the Management Control Unit, Administrative [Segregation] **Close Supervision** Unit, and Protective Custody Unit; and

5. (No change.)

10A:5-1.3 Definitions

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

“Adjustment Committee” means the [Committee] **committee** within a correctional facility that is authorized to hear and adjudicate inmate violations [or] **of** prohibited acts.

[“Administrative segregation” means removal of an inmate from the general population of a correctional facility to a close custody unit because of one or more disciplinary infractions.]

“Administrative Segregation Level Program” means a [three] **two**-level program established within an Administrative [Segregation] **Close Supervision** Unit. The levels are described as follows:

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

2. Level 2 is the level in which an inmate’s possessions, activities, privileges, and amenities shall be less restricted than level 1 [and] **but** more restricted than [level 3; and

3. Level 3 is the level in which an inmate’s possessions, activities, privileges and amenities shall be less than level 1 and level 2 but more restricted than] general population.

...

“Special Administrative Segregation Review Committee (S.A.S.R.C.)” means the committee members designated by the Director, Division of Operations responsible for the bimonthly review of the status of the inmates assigned to all Administrative [Segregation] **Close Supervision** Units.

...

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

10A:5-2.29 Disciplinary action within the Management Control Unit (M.C.U.)

(a) (No change.)

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

SUBCHAPTER 3. ADMINISTRATIVE SEGREGATION

10A:5-3.1 Admission to administrative segregation

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

(f) Not all correctional facilities within the Department of Corrections contain Administrative [Segregation] **Close Supervision** Units. If an inmate receives a sanction that includes administrative segregation but is housed in a correctional facility that does not have an Administrative [Segregation] **Close Supervision** Unit, the sanction first must be reviewed by the I.C.C. of the correctional facility in which the inmate is housed. If the sanction is confirmed, the referral for transfer to an Administrative [Segregation] **Close Supervision** Unit shall be forwarded to the CRAF Intake Unit where the transfer shall be initiated.

10A:5-3.2 Special Administrative Segregation Review Committee (S.A.S.R.C.)

(a) The S.A.S.R.C. is responsible for providing a bimonthly review, or more frequent reviews if deemed necessary, of the status of inmates assigned to all Administrative [Segregation] **Close Supervision** Units.

(b) The Director of the Division of Operations shall designate voting members who shall be an Associate Administrator/Assistant Superintendent/Captain or[, when unavailable, a] designee[,] to serve on the S.A.S.R.C. [on a six-month rotating basis.] The S.A.S.R.C. shall be composed of:

1. One voting member who shall be [a representative of the correctional facility] **an Associate Administrator or Assistant Superintendent from a facility designated by the Director;**
2. One voting member who shall be a representative from [another prison complex facility] **CRAF;** and
3. One voting member who shall be a representative from [a youth complex facility] **the Division of Operations.**

(c) The Director shall designate a chairperson from among the voting members to serve a [six-month or extended] term, as determined by the Director.

(d) - (f) (No change.)

(g) An inmate who has been assigned to an Administrative [Segregation] **Close Supervision** Unit for a period of 365 days or less shall have his or her case reviewed by the S.A.S.R.C. every 60 days, or more frequently if deemed necessary by the S.A.S.R.C., to review the inmate's level assignment and to evaluate the inmate's behavior while in the Administrative [Segregation] **Close Supervision** Unit.

(h) An inmate who has been assigned to an Administrative [Segregation] **Close Supervision** Unit for a period of more than 365 days shall have his or her case reviewed by the S.A.S.R.C. every six months, or more frequently if deemed necessary by the S.A.S.R.C. The review shall include the inmate's level assignment and the Committee shall evaluate the inmate's behavior

while in the Administrative [Segregation] **Close Supervision** Unit.

(i) (No change.)

(j) Upon review of the inmate's level assignment and behavior, the S.A.S.R.C. may determine that the inmate should be released from the Administrative [Segregation] **Close Supervision** Unit. The S.A.S.R.C. shall determine that an inmate should be released from the Administrative [Segregation] **Close Supervision** Unit when it concludes that:

1. The initial need for placement in the Administrative [Segregation] **Close Supervision** Unit no longer exists;

2.-4. (No change.)

5. The inmate has a history or presence of a **medical condition** or mental illness and continued confinement in [Administrative Segregation] **administrative segregation** is likely to add to the inmate's **medical or** mental decompensation.

(k) If the S.A.S.R.C. determines not to release the inmate from the Administrative [Segregation] **Close Supervision** Unit, the inmate shall be so advised in writing, together with the reasons therefor, unless security considerations preclude their disclosure, in which case a notation as to the Committee's reasons and an explanation of how security would be adversely affected shall be placed in the inmate's folder.

(l) If the S.A.S.R.C. determines to release the inmate, the Committee shall give the inmate written notice of the decision. The inmate shall be:

1. Released into the general population of the correctional facility in which he or she has been confined in the Administrative [Segregation] **Close Supervision** Unit;

2.-4. (No change.)

(m) (No change.)

(n) Inmates shall be scored with the Reclassification Instrument prior to release from the Administrative [Segregation] **Close Supervision** Unit and the score shall be considered by the S.A.S.R.C. when making inmate assignments. The S.A.S.R.C. is authorized to assign inmates to an appropriate correctional facility in accordance with the guidelines established for the [I.I.C.C.] **I.C.C.**

(o) - (p) (No change.)

10A:5-3.3 Separate facilities

Whenever possible, areas utilized for Administrative [Segregation] **Close Supervision** Units shall be physically separate from other programs in the correctional facility.

10A:5-3.6 Grooming, showering, and shaving

(a) (No change.)

(b) Each inmate in an Administrative [Segregation] **Close Supervision** Unit shall be given the opportunity to shave and shower not less than three times a week, unless permitting these activities would present an undue security hazard.

10A:5-3.7 Medical and psychiatric services

(a) A member of the medical staff, which can be a registered nurse, nurse practitioner, doctor, or other authorized health care personnel, shall be available in the Administrative [Segregation] **Close Supervision** Unit on a daily basis to assess medical needs. Any inmate wishing to see a doctor shall notify the medical staff member or housing custody staff member of his or her sick call request.

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

10A:5-3.8 Personal items

(a) A Director, Division of Operations or designee shall, in accordance with the Administrative Segregation Level Program, develop a written list of authorized personal property items and the amounts of personal property items authorized for retention by inmates while confined in an Administrative [Segregation] **Close Supervision** Unit.

(b) All inmates admitted to an Administrative [Segregation] **Close Supervision** Unit shall be permitted to retain only those personal property items and amounts of personal property as are set forth on the list of authorized, permissible items for inmates in an Administrative [Segregation] **Close Supervision** Unit developed under (a) above.

(c) (No change.)

10A:5-3.10 Inmate legal service

Legal services shall be made available to inmates assigned to an Administrative [Segregation] **Close Supervision** Unit. Legal services shall be in accordance with the provisions set forth in N.J.A.C. 10A:6, Inmate Access to Courts.

10A:5-3.11 Reading material

Inmates in Administrative [Segregation] **Close Supervision** Units shall be permitted to retain in their possession a reasonable amount of reading material. Procedures shall be in effect permitting inmates access to books and periodicals from the correctional facility library and Inmate Law Library.

10A:5-3.12 Correspondence, visits, and telephone calls

(a) Inmates in Administrative [Segregation] **Close Supervision** Units shall have the same correspondence opportunities as inmates in the general population.

(b) Each correctional facility that has an Administrative [Segregation] **Close Supervision** Unit shall provide each inmate in the Unit the opportunity to receive a minimum of one non-contact visit per 30 calendar days.

(c) Each correctional facility that has an Administrative [Segregation] **Close Supervision** Unit shall provide each inmate in the Unit the opportunity to make a minimum of one collect telephone call per week, excluding legal telephone calls (see N.J.A.C. 10A:6-2.8).

10A:5-3.13 Recreation

(a) Where physical facilities permit, each inmate in an Administrative [Segregation] **Close Supervision** Unit shall be allowed recreation and exercise outside the cell at least five hours per week, unless to do so would adversely affect the security or orderly operations of the correctional facility.

(b) Inmates in an Administrative [Segregation] **Close Supervision** Unit shall be given the opportunity for out-of-doors recreation for a minimum of one hour of the required five hours of recreation time per week, unless to do so would adversely affect the security or orderly operations of the correctional facility.

10A:5-3.14 Education

(a) Educational programs shall be comparable to those available to inmates in general population to the extent possible in accordance with security considerations, resources, budgetary constraints, and Administrative [Segregation] **Close Supervision** Unit internal management procedures.

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

10A:5-3.15 Visits by professional and correctional supervisory staff

(a) A member of the correctional facility social work staff shall make visits to the Administrative [Segregation] **Close Supervision** Unit five days per week and shall be available as soon as administratively possible to interview individual inmates as requested. When appropriate, referrals to other departments or staff members shall be made.

(b) The correctional facility chaplain shall also visit as soon as administratively possible the Administrative [Segregation] **Close Supervision** Unit as requested by individual inmates to provide religious counseling or other pastoral services.

(c) The supervisor in charge of the Administrative [Segregation] **Close Supervision** Unit

shall make daily visits to the Unit and shall be available as soon as administratively possible to interview individual inmates as requested.

10A:5-3.16 Work opportunities

Work opportunities may be made available to inmates assigned to an Administrative [Segregation] **Close Supervision** Unit to the extent possible in accordance with security considerations, limited resources, [and] availability of physical facilities, and budgetary constraints.

10A:5-3.17 Psychological/psychiatric evaluations

(a) Every inmate in the Administrative [Segregation] **Close Supervision** Unit for six months shall receive a psychiatric or psychological evaluation and shall receive a psychiatric or psychological evaluation every two months thereafter. The evaluation shall consider, but not be limited to, the following factors:

1.-3. (No change.)

(b) (No change.)

10A:5-3.18 Withdrawal of personal items or activities

(a) Whenever, in the judgment of the custody staff member in charge of an Administrative [Segregation] **Close Supervision** Unit, there is imminent danger that an inmate will destroy clothing or any items usually permitted the inmate in the cell, or do injury to self, to another person, or to property with such items, the custody staff member may deprive the inmate of such items, if practicable. Every effort shall be made to supply a substitute for the item or to permit the inmate to use the item under the supervision of the custody staff member.

(b) Whenever an inmate is deprived of any usually authorized item or activity, a written report shall immediately be forwarded to the Administrator or designee and the supervisor of the Administrative [Segregation] **Close Supervision** Unit, which shall identify the inmate and the item or activity. In addition, the S.A.S.R.C. shall review any such restriction within one week. Any continued restriction shall be permitted only with the written authorization of the S.A.S.R.C.

(c) (No change.)

10A:5-3.19 [Selection of staff] (**Reserved**)

[All custody, treatment and administrative staff for Administrative Segregation Units shall be selected in accordance with Department of Personnel regulations and the terms and conditions of all collective bargaining agreements and contracts entered into between the various working units and the Department of Corrections.]

10A:5-3.20 Records

(a) The following information on inmates confined in an Administrative [Segregation] **Close Supervision** Unit shall be available in the [Unit] **unit** for the use of appropriate staff:

1.-6. (No change.)

7. The date beyond which the inmate may not be retained in the Administrative [Segregation] **Close Supervision** Unit on the instant offense.

(b) (No change.)

CHAPTER 9

CLASSIFICATION PROCESS

SUBCHAPTER 3. INSTITUTIONAL CLASSIFICATION COMMITTEE (I.C.C.)

10A:9-3.1 Responsibilities of the Institutional Classification Committee (I.C.C.)

(a) Each correctional facility shall establish an I.C.C., which shall be responsible for:

1.-6. (No change.)

7. Review of the imposition of the [Administrative Segregation] **administrative segregation** sanction;

8.-10. (No change.)

(b) (No change.)

10A:9-3.14 Required reviews

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

(d) Inmates shall be reviewed and scored on the Reclassification Instrument upon a finding of guilt to a prohibited act(s) when:

1. A sanction imposed by the Disciplinary Hearing Officer includes a referral to I.C.C., except if [Administrative Segregation] **administrative segregation** is part of the imposed sanction;

2.-3. (No change.)

(e) When a disciplinary sanction includes [Administrative Segregation] **administrative segregation**, the inmate shall be reviewed and scored on the Reclassification Instrument prior to release from the Administrative [Segregation] **Close Supervision** Unit (see N.J.A.C. 10A:5-3).

SUBCHAPTER 5. COMMUTATION AND WORK TIME

10A:9-5.2 Exceptions; time in custody; failure to work

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

(f) Work credits shall not be awarded to [Administrative Segregation] **administrative segregation** inmates.