

CHAPTER 5

CLOSE CUSTODY UNITS

Authority

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

Source and Effective Date

R.1991 d.358, effective June 17, 1991.
See: 23 N.J.R. 1260(a), 23 N.J.R. 2143(a).

Executive Order No. 66(1978) Expiration Date

Chapter 5, Close Custody Units, will expire on June 17, 1996.

Chapter Historical Note

Chapter 5, Close Custody Units, was originally proposed and adopted as R.1986 d.410 and d.409, effective October 6, 1986. See: 18 N.J.R. 1067(a), 18 N.J.R. 2016(a).

The following correctional facilities in this chapter have been redesignated pursuant to N.J.S.A. 30:7-1:

Trenton State Prison to the New Jersey State Prison;

Youth Reception and Correction Center at Yardville to the Garden State Reception and Youth Correctional Facility;

Leesburg State Prison to the Bayside State Prison.

See: 21 N.J.R. 558(a).

Pursuant to Executive Order No. 66(1978), Chapter 5 was readopted as R.1991 d.358. See: Source and Effective Date.

See: Source and Effective Date.

See section level annotations for further specific rulemaking activity.

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SUBCHAPTER 1. INTRODUCTION

10A:5-1.1 Purpose

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

1. Assigning inmates to close custody units;

2. Reviewing the progress of inmates assigned to close custody units;

3. Releasing inmates from close custody units, when appropriate; and,

4. Operating the Management Control, Administrative Segregation, Capital Sentence, Protective Custody and Transitional Protective Custody Units.

10A:5-1.2 Scope

This chapter shall be applicable to the Division of Adult Institutions unless otherwise indicated.

10A:5-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings.

“Asterisk Offense” means a prohibited act preceded by a number and an asterisk.

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

“Administrative Segregation” means removal of an inmate from the general population of a correction facility to a long term close custody unit because of one or more disciplinary infractions or other administrative considerations.

“Capital Sentence Unit (C.S.U.)” means the close custody unit to which persons sentenced to death pursuant to N.J.S.A. 2C:11-3, are assigned until such time that the execution is carried out, or the sentence is commuted or changed to a lesser penalty.

“Close Custody Unit” means an area within a correctional facility designated for assigning inmates who are removed from the general population for disciplinary or administrative reasons.

“Commissioner” means the Commissioner of the New Jersey Department of Corrections.

“Custody Status” means the degree of supervision that is required for an inmate to enter or leave a correctional facility.

“Department” means the New Jersey Department of Corrections.

“Disciplinary Detention” means removal of an inmate from the general population of a correctional facility to a short term close custody unit because of a disciplinary infraction(s).

“Disciplinary Hearing Officer” means a Department staff member designated to hear and adjudicate inmate violations of prohibited acts.

“Disciplinary Report” means a form on which a violation of prohibited act is recorded along with other pertinent information.

“Disciplinary Sanction” means a prescribed penalty that is imposed for violation of a prohibited act.

“Institutional Classification Committee (I.C.C.)” means the Committee within a correctional facility that is responsible for monitoring an inmate’s progress and assigning him or her to appropriate programs or activities.

“Inter-Institutional Classification Committee (I.I.C.C.)” means the Committee, composed of representatives from different correctional facilities, that is responsible for determining the correctional facility to which an inmate is assigned and approving requests for transfer from one correctional facility to another.

“Major violations” mean the violation of a prohibited act that is preceded by an asterisk.

“Management Control Unit (M.C.U.)” means a close custody unit to which an inmate may be assigned if he or she poses a substantial threat to the safety of others; of damage to or destruction of property; or of interrupting the operation of a State correctional facility.

“Management Control Unit Review Committee (M.C.U.R.C.)” means the Committee within New Jersey State Prison that is responsible for hearing cases of inmates referred for placement in the Management Control Unit (M.C.U.) and for conducting three month status reviews of inmates assigned to M.C.U.

“Minor violations” means the violation of a prohibited act that is not preceded by an asterisk.

“On-the-Spot Correction” means the immediate imposition of a sanction upon an inmate for the violation of a minor prohibited act.

“Prehearing detention” means removal of an inmate from the general population pending an investigation and a hearing into an alleged violation of a prohibited act.

“Prison Complex” means state correctional facilities designated to house inmates serving prison sentences.

“Prohibited acts” means conduct in violations of rules and regulations, which will result in the imposition of sanctions.

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

“Special Administrative Segregation Review Committee (S.A.S.R.C.)” means the administrators, designated by the Deputy Director of the Division of Adult Institutions, who are responsible for the bimonthly review of the status of inmates assigned to all Administrative Segregation Units except the Vroom Readjustment Unit.

“Special Classification Committee (S.C.C.)” means the Committee composed of representatives from the Prison Complex, Youth Complex and Division of Juvenile Services which consider the transfer of inmates between Complexes.

“Superintendent” means the chief executive officer of any State correctional facility in the New Jersey Department of Corrections.

“Temporary close custody” means the non-punitive removal of an inmate from the inmate general population, or other assigned housing, with restriction to the inmate’s cell or to a close custody unit for a period not to exceed 72 hours, for special observation or investigation.

“Transitional Protective Custody Unit” means a Unit to which certain inmates, who have been assigned to a Protective Custody Unit, may be assigned as an initial step toward their reintegration into the general population of a correctional facility.

“Vroom-Administrative Segregation Review Committee” means the administrators, designated by the Superintendent of the New Jersey State Prison, who are responsible for the monthly review of the status of inmates assigned to the Vroom Readjustment Unit.

“Vroom Readjustment Unit (V.R.U.)” means an Administrative Segregation and Protective Custody Unit for inmates located in the Vroom Building, on the grounds of Trenton Psychiatric Hospital, Trenton, New Jersey.

“Youth Complex” means State correctional facilities designated to house young adult offenders with indeterminate sentences as set forth in N.J.S.A. 30:4-146.

Administrative Correction, effective January 27, 1989.

See: 21 N.J.R. 558(a).

Institutional name change.

10A:5-1.4 Forms

(a) The following forms related to close custody units shall be reproduced by each correctional facility from originals that are available by contacting the Standards Development Unit, New Jersey Department of Corrections:

1. 141-I AUTHORIZATION FOR PREHEARING M.C.U.;

2. 146-I VOLUNTARY—PROTECTIVE CUSTODY CONSENT;

3. 146-II NOTICE OF PROTECTIVE CUSTODY HEARING—INVOLUNTARY;

4. 146-III PROTECTIVE CUSTODY HEARING ADJUDICATION.

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

10A:5-2.1 Referrals for placement in the Management Control Unit (M.C.U.)

(a) Recommendations for placement of inmates in the Management Control Unit (M.C.U.) may be submitted to the Management Control Unit Review Committee (M.C.U.R.C.) by the:

1. Inter-Institutional Classification Committee (I.I.C.C.);
2. Institutional Classification Committee (I.C.C.);
3. Disciplinary Hearing Officer/Adjustment Committee;
4. Administrative Segregation Review Committees;
5. Superintendent (New Jersey State Prison);
6. Director of Custody Operations (New Jersey State Prison);
7. Director of Professional Services (New Jersey State Prison).

Administrative Correction, effective January 27, 1989.
See: 21 N.J.R. 558(a).
Institutional name change.

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

(a) The Management Control Unit Review Committee (M.C.U.R.C.) shall be composed of the:

1. Assistant Superintendent or the Director of the Vroom Readjustment Unit;
2. Director of Professional Services or his or her designate (that is, Director of Education, Director of Psychological Services, Director of Social Services, etc.); and,
3. The person designated by the Superintendent as the Supervisor of the Management Control Unit (M.C.U.).

10A:5-2.3 Responsibilities of the Management Control Unit Review Committee (M.C.U.R.C.)

(a) The Management Control Unit Review Committee (M.C.U.R.C.) shall meet at least once a week, when necessary, to deliberate on matters related to its responsibilities. The M.C.U.R.C. shall be responsible for:

1. Hearing the cases of inmates referred for placement in M.C.U.; and,

2. Reviewing the progress of each inmate placed in M.C.U. at least every three months to determine whether continued placement in the Unit is appropriate.

10A:5-2.4 Criteria for assigning inmates to the Management Control Unit (M.C.U.)

(a) The following criteria shall be utilized by the Management Control Unit Review Committee (M.C.U.R.C.) in determining the appropriateness of assigning inmates to the Management Control Unit (M.C.U.):

1. Disciplinary records during the inmates present term of confinement and any previous terms served. Weight shall be assigned to this criterion where there are a substantial number of minor charges, or one or more charges of a serious nature;

2. Past criminal offenses including those for which incarcerated, which indicate the capability and propensity to commit or precipitate serious acts of disruption or violence;

3. Number and location of previous institutionalizations including the disciplinary records, progress reports, classification reports, or any other records which indicate involvement in serious misbehavior;

4. Reports by professional staff (for example, psychologists, social workers, psychiatrists);

5. Reports indicating present involvement in criminal activities in the community or within the correctional facility;

6. Evidence of an attitude which indicates an unwillingness to follow rules and obey orders;

7. Inability to maintain a satisfactory work record as indicated in reports by work supervisors and/or frequency of job changes;

8. Information indicating unsatisfactory adjustment to, or performance in, treatment or rehabilitative programs; and,

9. Evidence of the inmate's inability or unwillingness to house with other inmates in a nondisruptive and non-destructive manner.

Case Notes

Prison regulations regarding placement of inmates in restrictive custody created liberty interest. *Layton v. Beyer*, C.A.3 (N.J.)1992, 953 F.2d 839.

Fact that inmate ultimately belonged in restrictive custody was irrelevant to issue of violation of liberty interest. *Layton v. Beyer*, C.A.3 (N.J.)1992, 953 F.2d 839.

Failure to hold hearing following placement of inmate in restrictive custody within specified 5 day period is not necessarily unconstitutional. *Layton v. Beyer*, C.A.3 (N.J.)1992, 953 F.2d 839.

Totality of circumstances must be evaluated to determine whether post-restrictive custody hearing was timely. *Layton v. Beyer*, C.A.3 (N.J.)1992, 953 F.2d 839.

Inmate's release on parole mooted appeal from decision upholding his assignment to special confinement unit. *Cinque v. New Jersey Dept. of Corrections*, 261 N.J.Super. 242, 618 A.2d 868 (A.D.1993).

10A:5-2.5 Assignment to the Management Control Unit (M.C.U.)

(a) An inmate shall be assigned to the Management Control Unit (M.C.U.) when the Management Control Unit Review Committee (M.C.U.R.C.), after considering the criteria in N.J.A.C. 10A:5-2.4, concludes that the inmate poses a substantial threat:

1. To the safety of others;
2. Of damage to or destruction of property; or,
3. Of interrupting the operation of a State correctional facility.

(b) Procedures for Management Control Unit Classification Committee (M.C.U.R.C.) hearings described in N.J.A.C. 10A:5-2.6 shall be followed and completed prior to placement in M.C.U.

(c) If there is a need for immediate placement in the M.C.U., such placement shall be made in accordance with N.J.A.C. 10A:5-2.8.

Law Review and Journal Commentaries

Prisons—Due Process—Informants. *Judith Nallin*, 134 N.J.L.J. No. 13, 61 (1993).

Case Notes

Prison regulations regarding placement of inmates in restrictive custody created liberty interest. *Layton v. Beyer*, C.A.3 (N.J.)1992, 953 F.2d 839.

Fact that inmate ultimately belonged in restrictive custody was irrelevant to issue of violation of liberty interest. *Layton v. Beyer*, C.A.3 (N.J.)1992, 953 F.2d 839.

Failure to hold hearing following placement of inmate in restrictive custody within specified 5 day period is not necessarily unconstitutional. *Layton v. Beyer*, C.A.3 (N.J.)1992, 953 F.2d 839.

Totality of circumstances must be evaluated to determine whether post-restrictive custody hearing was timely. *Layton v. Beyer*, C.A.3 (N.J.) 1992, 953 F.2d 839.

Prison officials' decision to place inmate in nonpunitive management control unit supported by record. *Taylor v. Beyer*, 265 N.J.Super. 345, 627 A.2d 166 (A.D.1993).

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

(a) An inmate being considered for assignment to the Management Control Unit (M.C.U.) shall be given written notice at least 24 hours prior to appearing before the Management Control Unit Review Committee (M.C.U.R.C.). The staff member delivering the notice shall indicate the time and date of delivery.

(b) This notice shall delineate the criteria which will be utilized in determining the inmate's suitability for the M.C.U. and shall provide an outline of the major factors in the particular inmate's case history which will be closely scrutinized.

(c) The inmate shall also be notified that he may obtain the help of an inmate to act as a counsel substitute to assist in marshaling the facts in the inmate's case and to be present at the hearing as a spokesperson.

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

(e) The M.C.U.R.C. Chairperson shall have the discretion to keep the hearing within reasonable limits and to refuse to permit the collection and presentation of evidence which is not necessary for an adequate understanding of the case. The Chairperson shall exercise control over all presentations to prevent lack of relevancy, harassment, abuse or repetitiveness and to insure that the hearing does not develop into an adversary proceeding.

(f) Unless there are exceptional circumstances, unavoidable delays or reasonable postponements, inmates shall be seen by the M.C.U.R.C. within 10 working days of being notified that they are being considered for the M.C.U.

(g) At the meeting with the M.C.U.R.C., the inmate shall be allowed to appear in person and to testify, unless his appearance would pose a serious threat to the safety or security of the correctional facility, the M.C.U.R.C., or unless he refuses to appear. In those cases where an inmate is not allowed to appear in person, he shall be permitted to present his case through a counsel substitute and through submission of such written materials as he believes appropriate.

(h) At the hearing, the inmate shall be informed of all adverse information bearing on the case, with the exception of information designated "confidential" by the M.C.U.R.C.

(i) Confidential information may consist of the following:

1. Informants' reports;
2. Professional reports (for example, psychiatrists, psychologists, social workers, teachers, etc.); or,
3. Other information which would have an adverse impact upon the inmate's mental health, create a serious risk of reprisal against the reporting individual, or seriously impede progress on a pending correctional facility investigation into such areas as narcotics trafficking, gambling rings, escape plots and other security problems.

(j) When considering confidential informant information, the M.C.U.R.C. shall inquire into the reliability of the

informant and the information, and it shall utilize such information only after satisfying itself that it is reasonably reliable.

(k) When information utilized by the M.C.U.R.C. is deemed confidential, and cannot be fully disclosed to the inmate, the M.C.U.R.C. shall direct the inmate and his representative to leave the meeting while this information is being presented or discussed. Whenever practicable, the inmate shall be informed of the general character of the information, the details of which have been withheld from him on grounds of confidentiality.

(l) When the inmate appears before the M.C.U.R.C., the Chairperson shall explain to him the reason for his appearance, the nature of the proceeding and the particular areas of the M.C.U.R.C.'s concern.

(m) The inmate shall be permitted to present documentary evidence related to his case. The inmate shall also be permitted to call witnesses on his own behalf when permitting him to do so will not risk the maintenance of security or the orderly operation of the correctional facility. The M.C.U.R.C. shall have the discretion, however, to keep the hearing within reasonable limits.

(n) The Chairperson of the M.C.U.R.C. shall call those witnesses deemed to be reasonably available and whose testimony is necessary for a proper understanding of the circumstances of the particular case. Repetitive witnesses need not be called. The Chairperson shall have the discretion to refuse to call witnesses that may create a risk of reprisal. Unavailable witnesses may be asked to submit written statements. Witnesses requested by the inmate who are called should be questioned by members of the M.C.U.R.C. or the counsel substitute. Inmates without a counsel substitute may request that certain questions be directed by Committee members to any witnesses.

(o) The M.C.U.R.C. Chairperson shall exercise control over all presentations to exclude irrelevant information and to prevent harassment, abuse or repetition. If the Chairperson shall refuse to call one or more witnesses, the reasons for each such refusal shall be separately specified on the decision form.

(p) During the formal review with the inmate, the M.C.U.R.C. may give guidance to the inmate with respect to the reason for the rules and policies of the correctional facility.

(q) When the M.C.U.R.C. notes a particular treatment need which can be met by existing treatment services, and the inmate indicates a willingness to participate in such treatment, the M.C.U.R.C. shall make the appropriate referral.

(r) Within one calendar week, the M.C.U.R.C. shall provide a written notice of decision to the inmate advising him of its reason for the decision and a summary of the evidence relied upon.

(s) In its written notice of decision to the inmate being admitted or retained in M.C.U., the M.C.U.R.C. shall point out the elements of the inmate's behavior or attitude which are deemed to be unsatisfactory and shall advise him that the next formal M.C.U.R.C. review on his case will be held in three months.

Law Review and Journal Commentaries

Prisons—Due Process—Informants. Judith Nallin, 134 N.J.L.J. No. 13, 61 (1993).

Case Notes

General character of confidential information used by prison officials in placing inmate in nonpunitive management control unit was adequately disclosed. *Taylor v. Beyer*, 265 N.J.Super. 345, 627 A.2d 166 (A.D.1993).

Prison officials' decision to place inmate in nonpunitive management control unit supported by record. *Taylor v. Beyer*, 265 N.J.Super. 345, 627 A.2d 166 (A.D.1993).

10A:5-2.7 Appeal of Management Control Unit Review Committee (M.C.U.R.C.) decisions

(a) At the time the inmate is provided with the Management Control Unit Review Committee's (M.C.U.R.C.) decision, he shall be advised of the opportunity to have the Superintendent or his or her designee review the M.C.U.R.C. decision. The inmate shall have one calendar week to submit a letter of appeal. The Superintendent or his or her designee may approve or modify any M.C.U.R.C. decision as he or she deems appropriate. The Superintendent or his or her designee may also order further hearings where appropriate.

(b) During the Superintendent's review, the following factors shall be considered:

1. Whether there was compliance with N.J.A.C. 10A:5-2.6;
2. Whether the decision of the M.C.U.R.C. was based on substantial evidence; and,
3. Whether the decision was rendered appropriate to the inmate's case.

(c) The Superintendent's decision will be forwarded to the inmate in writing within seven working days following receipt of the appeal.

10A:5-2.8 Use of Prehearing Management Control Unit prior to the Management Control Unit Review Committee (M.C.U.R.C.) meeting

(a) The inmate may be placed in Prehearing M.C.U. by order of the Superintendent or his or her designee when there is reasonable evidence that, if the inmate remains in general population, there is an immediate threat:

1. To the safety of others;
2. Of damage to or destruction of property; or,
3. Of interrupting the safe, secure and orderly operation of the correctional facility.

(b) The inmate shall be entitled to a hearing within 10 working days following his placement into Prehearing M.C.U.

(c) An inmate placed in Prehearing M.C.U. shall be given the written notice of the Management Control Unit Review Committee (M.C.U.R.C.) hearing as described in N.J.A.C. 10A:5-2.6 within 24 hours following placement in Prehearing M.C.U.

(d) An inmate may be placed in Prehearing M.C.U. only after such placement is authorized by the Superintendent or Assistant Superintendent. Form 141-I AUTHORIZATION FOR PREHEARING M.C.U. shall be utilized for this purpose.

(e) A separate Form 141-I must be completed for each inmate and, whenever possible, Form 141-I should be completed prior to placing the inmate in Prehearing M.C.U.

(f) When an emergency exists which precludes completion of the Form 141-I prior to placement, the Form must be completed immediately following placement. After all appropriate parties have signed Form 141-I, it shall be placed in the inmate's classification folder and a copy shall be placed in the inmate's M.C.U. folder.

(g) Additional copies of completed Form 141-I may be kept on file, for record keeping purposes, in any areas designated by the Superintendent and the Director of Custody Operations.

Amended by R.1991 d.358, effective July 15, 1991.
See: 23 N.J.R. 1260(a), 23 N.J.R. 2143(a).

Changed the amount of time within which an inmate is entitled to a hearing following placement in M.C.U. from five working days to 10 working days in cases when an inmate is placed into M.C.U. prior to a hearing.

Case Notes

Prison regulations regarding placement of inmates in restrictive custody created liberty interest. *Layton v. Beyer*, C.A.3 (N.J.)1992, 953 F.2d 839.

Fact that inmate ultimately belonged in restrictive custody was irrelevant to issue of violation of liberty interest. *Layton v. Beyer*, C.A.3 (N.J.)1992, 953 F.2d 839.

Failure to hold hearing following placement of inmate in restrictive custody within specified 5 day period is not necessarily unconstitutional. *Layton v. Beyer*, C.A.3 (N.J.)1992, 953 F.2d 839.

Totality of circumstances must be evaluated to determine whether post-restrictive custody hearing was timely. *Layton v. Beyer*, C.A.3 (N.J.)1992, 953 F.2d 839.

10A:5-2.9 Use of Prehearing Management Control Unit during an emergency

(a) In the event an emergency is declared which poses an immediate and substantial threat to the security and orderly operation of the correctional facility, it may become necessary to implement a total lock-up of inmates. The correctional facility shall remain in this lock-up state until such time as the emergency no longer exists.

(b) During this period between total lock-up and a return to normal operations any number of inmates may be placed in Prehearing M.C.U. status should their behavior fall into the placement criteria as outlined in N.J.A.C. 10A:5-2.8, USE OF PREHEARING MANAGEMENT CONTROL UNIT PRIOR TO THE MANAGEMENT CONTROL UNIT REVIEW COMMITTEE (M.C.U.R.C.) MEETING. When an unusually large number of inmates is involved, the procedures set forth in this subchapter shall be modified in order to maintain an effective level of security and order, and at the same time, attempt to provide each inmate with the maximum M.C.U. hearing safeguards under these unusual circumstances.

(c) The following procedures shall be implemented and remain in effect until normal operations resume:

1. Inmates who have been identified as being a threat to the secure and orderly operation of the facility shall remain in Prehearing M.C.U. at housing assignments to be designated by the Superintendent or his or her designee.

2. Each inmate shall receive a written notice explaining the existence of the emergency, informing him that he has been identified as a threat to the secure and orderly operation of the facility, and advising him that he will receive an in-person hearing as soon as possible.

3. The schedule for the hearings shall be affected by the number of inmates involved and the need to insure security. A schedule of such hearings shall be issued by the Superintendent.

4. The Superintendent shall designate such special hearing officers as are familiar with classification materials and the M.C.U. process to conduct hearings as promptly as is possible. The inmate shall be permitted to appear in person unless doing so would be unduly hazardous to the safety of the hearing officer or security of the facility.

5. At the hearing the inmate shall be informed verbally of all adverse information bearing on his case with the exception of information designated "confidential." When reviewing confidential information, procedures set forth in N.J.A.C. 10A:5-2.6 shall apply.

6. The inmate shall be permitted to speak on his own behalf or to submit a written statement. If the inmate is illiterate or otherwise demonstrates a need for assistance

in presenting his statement, a staff member may be assigned to assist him at the hearing.

7. The inmate shall receive a written notice of decision within 10 days.

8. Review procedures, after initial classification to M.C.U. during these emergency conditions, shall be those set forth in N.J.A.C. 10A:5-2.6 and N.J.A.C. 10A:5-2.10. These review procedures shall be commenced within three months following initial placement with subsequent reviews held every three months.

9. Conditions of confinement as set forth in this Subchapter shall be modified as is reasonably necessary during the pendency of the emergency to insure security and the continued orderly operation of the facility.

10A:5-2.10 Review of inmates placed in the Management Control Unit (M.C.U.)

(a) When the Management Control Unit Review Committee (M.C.U.R.C.) determines that placement in the Management Control Unit (M.C.U.) is appropriate for a particular inmate, a preliminary determination shall also be made as to when the continued need for the M.C.U. program will be reviewed. In any case, a formal review of each inmate in the M.C.U. shall be made a minimum of every three months.

(b) A written record shall be maintained by the M.C.U.R.C. of all reviews of inmates in the M.C.U. This record shall be kept in a separate file in addition to being made a permanent part of the inmate's case folder. A confidential notation shall be made in the file if the M.C.U.R.C.'s conclusions regarding findings or disposition in a particular case are not unanimous. All M.C.U.R.C. reports shall be signed by all members.

(c) The inmate shall be permitted to appear at all reviews of his case unless doing so would be unduly hazardous to the safety and security of the facility, or he refuses to appear.

(d) Any member of the M.C.U.R.C. may request a review for an inmate in the M.C.U. earlier than was previously determined.

(e) At each review, the M.C.U.R.C. shall again review the information upon which it based its decision to assign the inmate to the M.C.U. Such information shall include:

1. Disciplinary reports;
2. Programs participation (for example, education, counseling, recreation activities, etc.); and,
3. Records of the inmate's behavior and attitude while in the Unit (for example, wing officers and professional staff reports which must periodically be filed describing pertinent observations, both positive and negative, of the inmate's behavior and attitude while in the M.C.U.).

(f) An inmate shall be released from the M.C.U. when, in the opinion of the M.C.U.R.C., he no longer poses a substantial threat:

1. To the safety of others;
2. Of damage to or destruction of property; or,
3. Of interrupting the operation of a State correctional facility.

Case Notes

Inmate's release on parole mooted appeal from decision upholding his assignment to special confinement unit. *Cinque v. New Jersey Dept. of Corrections*, 261 N.J.Super. 242, 618 A.2d 868 (A.D.1993).

10A:5-2.11 Ventilation, heating, lighting and sanitation

(a) Proper ventilation, lighting, normal room temperatures, cleanliness and properly functioning sanitary fixtures shall be maintained in cells within the Management Control Unit (M.C.U.).

(b) Daily inspections shall be made to insure that the cells, corridors, toilets, showers and other areas within the M.C.U. are kept secure, clean and sanitary.

10A:5-2.12 Food

(a) Management Control Unit (M.C.U.) inmates shall be served the normal correctional facility meals on the "Menu of the Day" or such special diet as shall be prescribed.

(b) Disposable utensils shall be used when necessary.

10A:5-2.13 Showers, shaving

Each inmate in the Management Control Unit (M.C.U.) shall be permitted to shave and shower at least two times a week, unless permitting these activities would present an undue security hazard. Every effort shall be made to permit each inmate in M.C.U. to shave and shower every other day.

10A:5-2.14 Medical and psychiatric services

(a) Medical and psychiatric emergencies of inmates in the Management Control Unit (M.C.U.) shall be attended to immediately.

(b) Requests for medical attention by staff or inmates in non-emergency situations shall be responded to by the physician who visits the M.C.U. every weekday.

(c) The level of all other medical and psychiatric services shall be the equivalent of that provided to inmates in the general population.

10A:5-2.15 Personal items

(a) All inmates shall be admitted to the Management Control Unit (M.C.U.) dressed in normal correctional facility clothing after a thorough search for contraband.

(b) Each inmate shall be provided with the following items to the same extent as such items are provided for inmates in the general population:

1. Clothing required for use in cell;
2. Bedding and mattress;
3. Personal hygiene supplies (including soap, deodorant, toothbrush, toothpaste or powder, towel and toilet paper);
4. Utensils and supplies for adequately cleaning cell;
5. Eyeglasses; and,
6. Writing materials.

(c) The possession and use of radios, televisions, typewriters and other appliances in the M.C.U. shall be subject to the same guidelines as those developed by the Superintendent for the general population.

(d) Inmates in M.C.U. shall be permitted the same number of personal and library books as the general population. Written procedures shall be in effect for requesting, receiving and returning reading materials to the correctional facility's library and Inmate Law Library.

10A:5-2.16 Disposition of inmate's personal possessions not authorized in the Management Control Unit (M.C.U.)

(a) The inmate's personal possessions not authorized in the Management Control Unit (M.C.U.) shall not be stored by the correctional facility.

(b) Disposition of these non-permissible personal possessions shall be handled in accordance with N.J.A.C. 10A:1, ADMINISTRATION, ORGANIZATION AND MANAGEMENT.

10A:5-2.17 Correctional facility clothing, bedding and linen

Written procedures shall be established which provide for each inmate in the Management Control Unit (M.C.U.) to send clothing, towels, sheets and other linens to the laundry on a weekly basis.

10A:5-2.18 Inmate legal activities

(a) Inmates shall be provided access to attorneys.

(b) Inmates shall also have access to the Inmate Law Library by means of inmate law library clerks who shall respond to the appropriate request of the Management Control Unit (M.C.U.) residents for legal reference materials, services and supplies as afforded inmates in the general population.

(c) The Superintendent shall be responsible for ensuring that M.C.U. inmates have reasonable access to notary services.

10A:5-2.19 Correspondence, visits and telephone calls

(a) Correspondence, visiting or telephone calling opportunities shall be available to inmates in the Management Control Unit (M.C.U.) but conducted in accordance with any special precautions deemed necessary or appropriate by the Superintendent.

(b) No staff member shall monitor the content of conversation between an inmate and his attorney or spiritual advisor.

(c) Restrictions of visits or telephone calls for persons in the M.C.U. shall be made in accordance with N.J.A.C. 10A:5-2.26.

10A:5-2.20 Exercise and recreation

(a) Efforts shall be made to provide opportunities for exercise and recreation consistent with custodial considerations. Each inmate in the Management Control Unit (M.C.U.) shall be permitted the minimum of two hours exercise each week and every effort shall be made to provide at least five hours per week, unless compelling security, safety or weather reasons dictate otherwise. When exercise is not permitted, the reasons shall be well documented.

(b) The Superintendent may take emergency action in suspending exercise or recreation privileges for any or all inmates until the emergency has passed. In any such emergency, the Superintendent shall notify the Commissioner.

10A:5-2.21 Education

(a) Educational programs shall be made available to inmates in the Management Control Unit (M.C.U.) who are desirous of participating in them.

(b) A teacher shall be assigned to the M.C.U. and an office shall be available in the Unit for his or her activities.

10A:5-2.22 Visits by professional staff

(a) Inmates in the Management Control Unit (M.C.U.) shall be visited daily during the work week by a member of the correctional facility's professional staff to determine any emergency or unusual needs of the inmates and make referrals to appropriate departments or staff members.

(b) Spiritual counseling shall be available on an individual basis as coordinated by the correctional facility's chaplain and consistent with the M.C.U. operating procedures.

10A:5-2.23 Work opportunities

(a) Work opportunities shall be provided to all inmates in the Management Control Unit (M.C.U.) in keeping with the special conditions of the Unit.

(b) Pay and work time credits shall be commensurate with the skill level and the amount of work responsibilities involved.

(3) Education and program credits shall be commensurate with credits available to the general population.

10A:5-2.24 Social, psychological and counseling program

(a) Treatment programs shall be available in the Management Control Unit (M.C.U.) to at least the same extent as available to the general inmate population. Social workers and a psychologist shall be assigned to the M.C.U. and offices shall be provided for each of these professional persons. The professionals shall provide services consistent with those provided to the general population (for example, crisis intervention, problem solving, short and long term counseling, parole and classification evaluations, etc.) and shall work closely with the M.C.U. supervisor and staff.

(b) Counseling sessions shall be arranged upon the request of an inmate confined in the M.C.U. Counseling shall be coordinated between the professional assigned to the M.C.U. and the Director of Professional Services.

(c) Two interview rooms shall be set aside within the M.C.U. for use by the assigned professionals, the M.C.U. supervisor, the Parole Counselor, and professional representatives of outside agencies such as Social Security, Veteran's Administration, Morrow Project, and Vocational Rehabilitation.

10A:5-2.25 Commissary

(a) Purchase of commissary items in the Management Control Unit (M.C.U.) shall be permitted within guidelines developed by the M.C.U. supervisor and approved by the Superintendent.

(b) Procedures for obtaining commissary items shall be the same as for the general population.

10A:5-2.26 Withdrawal of personal items or activities

(a) Whenever in the judgment of the officer in charge of the Management Control Unit (M.C.U.) there is imminent danger that an inmate will destroy his clothing or any items usually permitted the inmate in his cell, or will do injury to himself, to another person or to property with such items, the officer may deprive the inmate of such items, if practicable. In such case, however, effort shall be made to provide a substitute for the item or to permit the inmate to use the item under the supervision of the officer.

(b) Whenever an inmate is deprived of any usually authorized item or activity, a written report shall immediately be forwarded to the Superintendent or his or her designee and the M.C.U. Supervisor, identifying the inmate and the item or activity.

(c) The Management Control Unit Review Committee (M.C.U.R.C.) shall review any such restriction within one week. Any continued restriction shall be permitted only with the written authorization of the M.C.U.R.C.

(d) Such restrictions shall be reviewed on a weekly basis to determine whether there is reasonable certainty that the danger to person or property is no longer imminent and the restriction may be lifted.

10A:5-2.27 Special custodial responsibilities

(a) Because of the increased need for close security within the Management Control Unit (M.C.U.), the frequency and intensity of certain custodial functions shall be increased. Thorough cell searches may be conducted as often as once a week if found necessary for certain inmates or as often as twice a month for the entire population of the M.C.U. Spotchecks of cells may be conducted at any time.

(b) Despite the increased need for security, precautions shall be taken to insure that the inmates in the M.C.U. are not subjected to unnecessary limitations of their personal privacy. The M.C.U. supervisor or another person acting on the direct or standing orders of the Superintendent must authorize any non-routine cell searches.

10A:5-2.28 Disciplinary action within the Management Control Unit (M.C.U.)

(a) The rules set forth in N.J.A.C. 10A:4, INMATE DISCIPLINE shall be in full force and effect in the Management Control Unit (M.C.U.).

(b) 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 maintain special restriction of privileges upon an inmate for longer than 30 days, the Disciplinary Hearing Officer/Adjustment Committee shall recommend assignment to Administrative Segregation to the Institutional Classification Committee (I.C.C.).

10A:5-2.29 Program monitoring, review and modification

The Management Control Unit Review Committee (M.C.U.R.C.) shall continuously monitor and review all aspects of the Management Control Unit (M.C.U.). When the M.C.U.R.C. desires to make any significant deviation from the M.C.U. Program as delineated in this Subchapter a request shall be submitted in writing through the Superintendent to the Assistant Commissioner, Division of Adult Institutions.

10A:5-2.30 Compliance with all other rules

In addition to the rules contained in this subchapter, all other Department rules applicable to inmates in the New Jersey State Prison, shall apply with equal force to inmates in the Management Control Unit (M.C.U.).

Administrative correction, effective January 27, 1989.
See: 21 N.J.R. 558(a).
Institutional name change.

SUBCHAPTER 3. ADMINISTRATIVE SEGREGATION

10A:5-3.1 Admission to Non-Vroom administrative segregation

(a) Whenever the Disciplinary Hearing Officer imposes a sanction at the Edna Mahan Correctional Facility for Women which includes administrative segregation, the administrative segregation part of the sanction shall be referred by the Disciplinary Hearing Officer to the Institutional Classification Committee (I.C.C.) for review at the Committee's next regularly scheduled meeting.

(b) In considering the sanction, the Institutional Classification Committee (I.C.C.) shall consider any relevant factors including, but not limited to:

1. The circumstances and gravity of the disciplinary infraction;
2. The reason(s) given by the Disciplinary Hearing Officer for the sanction imposed;
3. The inmate's previous disciplinary record; and,
4. Whether other available dispositions are adequate to regulate the inmate's behavior within acceptable limits.

(c) Confirmation shall be made where the Institutional Classification Committee (I.C.C.) determines that the sanction is appropriate and within acceptable limits, and where the inmate's presence in the general population could pose a threat to the safe, secure and orderly operations of the correctional facility.

(d) The Institutional Classification Committee (I.C.C.) shall provide written notice to the inmate of its decision confirming, modifying or overruling the administrative segregation sanction together with its reasons therefor.

(e) A copy of the I.C.C. notice shall be filed in the inmate's classification folder.

(f) Whenever the Disciplinary Hearing Officer/Adjustment Committee imposes a sanction at an adult correctional facility other than the Edna Mahan Correctional Facility for Women which includes administrative segregation, the administrative segregation part of the sanction shall be referred by the Disciplinary Hearing Officer/Adjustment Committee to the Institutional Classification Committee (I.C.C.) of the correctional facility for review at the Committee's next regularly scheduled meeting.

(g) When reviewing the sanction, the Institutional Classification Committee (I.C.C.) shall consider any relevant factors including, but not limited to:

1. The circumstances and gravity of the disciplinary infraction;
2. The reason(s) given by the Disciplinary Hearing Officer/Adjustment Committee for the sanction imposed;
3. The inmate's previous disciplinary record; and
4. Whether other available dispositions are adequate to regulate the inmate's behavior within acceptable limits.

(h) Upon review of the administrative segregation sanction, the Institutional Classification Committee (I.C.C.) shall submit the sanction to the Inter-Institutional Classification Committee (I.I.C.C.) along with a recommendation to confirm, modify or overrule the sanction and the reason(s) therefor.

(i) Confirmation shall be made where the Inter-Institutional Classification Committee (I.I.C.C.) determines that the administrative segregation sanction is appropriate and within acceptable limits, and where the inmate's presence in the general population could pose a threat to the safe, secure and orderly operations of the correctional facility.

(j) The Inter-Institutional Classification Committee (I.I.C.C.) shall provide written notice to the inmate of the Committee's decision confirming, modifying or overruling the administrative segregation sanction together with the reasons therefor.

(k) A copy of the Inter-Institutional Classification Committee's (I.I.C.C.) notice shall be filed in the inmate's classification folder.

(l) Not all adult correctional facilities within the Department of Corrections contain Administrative Segregation Units. If an inmate receives a sanction which includes administrative segregation, but is housed in a correctional facility which does not have an Administrative Segregation Unit, the sanction first must be reviewed by the Institutional Classification Committee (I.C.C.) of the correctional facility in which the inmate is housed. The administrative segregation sanction shall then be referred to the next regularly scheduled meeting of the Inter-Institutional Classification Committee (I.I.C.C.) for confirmation. If the sanction is confirmed, the I.I.C.C. shall approve the transfer of the inmate to a correctional facility within the Division of Adult Institutions which has an Administrative Segregation Unit.

Amended by R.1990 d.120, effective February 20, 1990.
See: 21 N.J.R. 3409(a), 22 N.J.R. 661(b).

At (a) reference to Edna Mahan Correctional Facility for Women added and new (f)-(k) added.

Amended by R.1991 d.358, effective July 15, 1991.
See: 23 N.J.R. 1260(a), 23 N.J.R. 2143(a).

Replaced word "confirmation" with the word "review" indicating that the administrative segregation part of a sanction, at the Edna Mahan Correctional Facility for Women, would be referred by the Disciplinary

Hearing Officer to Institutional Classification Committee for review at the committee meeting.

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

(a) The Special Administrative Segregation Review Committee (S.A.S.R.C.) is a subcommittee of the Inter-Institutional Classification Committee (I.I.C.C.) which is responsible for providing a bimonthly review of the status of inmates assigned to all Administrative Segregation Units except the Vroom Readjustment Unit (V.R.U.).

(b) The Deputy Director of the Division of Adult Institutions shall designate voting members, whose titles shall not be lower than Assistant Superintendent, 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 New Jersey State Prison;
2. One voting member who shall be a representative from another Prison Complex facility; and,
3. One voting member who shall be a representative from a Youth Complex facility.

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

(d) An in-house psychiatrist or psychologist and a representative of the Classification Department shall attend each meeting of the S.A.S.R.C. but they will have no voting power.

(e) The S.A.S.R.C. shall meet as frequently as is necessary to accomplish the business of the S.A.S.R.C., and the meetings shall be held at a facility designated by the members.

(f) An inmate, who has been assigned to an Administrative Segregation Unit for a period of 365 days or less, shall have his or her case reviewed every 60 days by the S.A.S.R.C. in order to evaluate the inmate's behavior while in the Administrative Segregation Unit.

(g) An inmate, who has been assigned to an Administrative Segregation 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., to evaluate the inmate's behavior while in the Administrative Segregation Unit.

(h) The S.A.S.R.C. review shall not necessitate the inmate's presence although the Committee may, where it deems necessary, require the inmate to appear, unless he or she refuses to appear without the use of force.

(i) Upon review of the inmate's behavior, the S.A.S.R.C. may determine that the inmate should be released from the Administrative Segregation Unit. The S.A.S.R.C. shall determine that an inmate should be released from the Administrative Segregation Unit when it concludes that:

1. The initial need for placement in the Administrative Segregation Unit no longer exists;
2. The inmate has clearly demonstrated by his or her behavior that he or she can and will adequately conform to the rules and regulations of correctional facilities;
3. The inmate's presence in the general population will not pose a threat to the safe, secure and orderly operations of a facility; and,
4. The inmate's presence in the general population prior to completion of the sanction as specified by the Disciplinary Hearing Officer/Adjustment Committee would not adversely affect the goals of a correctional facility.

(j) If the S.A.S.R.C. determines not to release the inmate from the Administrative Segregation 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.

(k) If the S.A.S.R.C. determines to release the inmate, it shall give the inmate written notice of its 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 Unit;
2. Referred to the Management Control Unit Review Committee (M.C.U.R.C.) for the Management Control Unit (M.C.U.);
3. Referred for a Protective Custody hearing; or,
4. Referred to the Inter-Institutional Classification Committee (I.I.C.C.) for possible transfer to another correctional facility.

(l) If the inmate is transferred to general population and wishes a transfer to another correctional facility, he or she shall submit a request to the Institutional Classification Committee (I.C.C.) for consideration by the Inter-Institutional Classification Committee (I.I.C.C.)

(m) The S.A.S.R.C. is authorized to assign inmates to an appropriate correctional facility in accordance with the guidelines established for the Inter-Institutional Classification Committee (I.I.C.C.).

(n) The decision of the S.A.S.R.C. to assign an inmate to another correctional facility shall be confirmed by the Inter-Institutional Classification Committee (I.I.C.C.) at its next regularly scheduled meeting. The inmate shall receive written notice of this decision.

(o) The appropriate Deputy Director shall be contacted for assistance when the transfer of an inmate from administration segregation status to another correctional facility cannot be completed because of a lack of available bed space.

(p) Upon final confirmation of the inmate's assignment by the Inter-Institutional Classification Committee (I.I.C.C.) and approval by the appropriate Deputy Director, the receiving correctional facility shall be responsible for immediately contacting the sending correctional facility and making the arrangements necessary for transferring the inmate.

Administrative correction, effective January 27, 1989.

See: 21 N.J.R. 558(a).

Institutional name change.

Amended by R.1990 d.120, effective February 20, 1990.

See: 21 N.J.R. 3409(a), 22 N.J.R. 661(b).

New (g) added, recodified (g)-(o) to (h)-(p) and established different periods for review for inmates assigned to Administrative Segregation Units for periods longer than 365 days.

10A:5-3.3 Admission to the Vroom Administrative Segregation Unit

(a) Whenever the Disciplinary Hearing Officer/Adjustment Committee has imposed a sanction which includes administrative segregation and specifies the Administrative Segregation Unit at the Vroom Readjustment Unit (V.R.U.), the administrative segregation part of the sanction shall be referred by the Disciplinary Hearing Officer/Adjustment Committee to the next regularly scheduled Inter-Institutional Classification Committee (I.I.C.C.) meeting for confirmation.

(b) In considering the sanction, the Inter-Institutional Classification Committee (I.I.C.C.) shall consider any relevant factors including, but not limited to:

1. The circumstances and gravity of the disciplinary infraction;
2. The reason(s) given by the Disciplinary Hearing Officer/Adjustment Committee for the sanction imposed;
3. The inmate's previous disciplinary record; and/or,
4. Whether other available dispositions are adequate to regulate the inmate's behavior within acceptable limits.

(c) Confirmation shall be made where the Inter-Institutional Classification Committee (I.I.C.C.) determines that the sanction is appropriate and within acceptance limits, and where the inmate's presence in the general population could pose a threat to the safe, secure and orderly operations of the correctional facility.

(d) The Inter-Institutional Classification Committee (I.I.C.C.) shall provide written notice to the inmate of its decision confirming, modifying or overruling the administrative segregation sanction together with its reasons therefor. A copy of this notice shall be filed in the inmate's classification folder.

10A:5-3.4 Vroom-Administrative Segregation Review Committee

(a) The Superintendent of New Jersey State Prison shall appoint a separate Vroom-Administrative Segregation Review Committee which shall be composed of three persons which shall include:

1. A correctional officer of the rank of Sergeant or above;
2. A treatment staff person; and,
3. An administrative staff person.

(b) The Superintendent shall designate one member of the Vroom-Administrative Segregation Review Committee to serve as Chairperson. All members shall regularly be assigned to work in the Vroom Readjustment Unit.

(c) Each inmate housed in the Vroom Administrative Segregation Unit shall have his case reviewed once each month by the Vroom Administrative Segregation Review Committee. This review shall not necessitate the inmate's presence although the Committee may, where it deems necessary, require the inmate to appear, unless the inmate refuses to appear without the use of force.

(d) The purpose of the review shall be to evaluate the inmate's behavior while in the Vroom Administrative Segregation Unit.

(e) Upon review of the inmate's record while in Vroom Administrative Segregation Unit, the Vroom Administrative Segregation Review Committee may recommend to the Inter-Institutional Classification Committee (I.I.C.C.) that he be released from the Unit. Such a recommendation shall be made when the Committee concludes that:

1. The initial need for placement in the Vroom Administrative Segregation Unit no longer exists;
2. The inmate has clearly demonstrated by his behavior that he can and will adequately conform to correctional facility rules and regulations;
3. The inmate's presence in general population will not pose a threat to the safe, secure and orderly operations of the correctional facility; and,
4. The inmate's presence in the general population prior to completion of the sanction as specified by the Disciplinary Hearing Officer/Adjustment Committee would not adversely affect correctional facility goals.

(f) The inmate shall receive notice of the Vroom-Administrative Segregation Review Committee's decision.

(g) If the Vroom-Administrative Segregation Review Committee determines not to release the inmate from the Vroom Administrative Segregation 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 classification file.

Administrative correction, effective January 27, 1989.
See: 21 N.J.R. 558(a).
Institutional name change.

10A:5-3.5 Role of the Inter-Institutional Classification Committee (I.I.C.C.) in review of inmates in the Vroom Administrative Segregation Unit

(a) If the Vroom-Administrative Segregation Review Committee recommends release from the Vroom Administrative Segregation Unit prior to the time specified by the Disciplinary Hearing Officer/Adjustment Committee, the Vroom-Administrative Segregation Review Committee shall make the recommendation to the Inter-Institutional Classification Committee (I.I.C.C.) together with the reasons therefor at the I.I.C.C.'s next regularly scheduled meeting.

(b) The Inter-Institutional Classification Committee (I.I.C.C.) shall act upon the Vroom-Administrative Segregation Review Committee's recommendation.

(c) The Inter-Institutional Classification Committee (I.I.C.C.) shall review the record of every inmate in the Vroom Administrative Segregation Unit no later than six months after his admission to the Unit and every three months thereafter to determine whether the inmate shall be released or retained in the Unit. The review shall be of the inmate's folder and include an evaluation of the reports of staff members. The review shall not necessitate the inmate's presence although the Inter-Institutional Classification Committee (I.I.C.C.) may, where it deems necessary, require the inmate to appear, unless the inmate refuses to appear without the use of force.

(d) In reviewing each case, the Inter-Institutional Classification Committee (I.I.C.C.) shall consider such factors as whether:

1. The initial need for placement in the Vroom Administrative Segregation Unit still exists;
2. The inmate has clearly demonstrated by his behavior that he can and will conform to correctional facility rules and regulations;
3. The inmate's presence in general population may pose a threat to the safe, secure and orderly operations of the correctional facility; and,

4. The inmate's presence in general population prior to completion of the sanction as specified by the Disciplinary Hearing Officer/Adjustment Committee would adversely affect the goals of the correctional facility.

(e) If the Inter-Institutional Classification Committee (I.I.C.C.) decides not to release the inmate from the Vroom Administrative Segregation Unit, it shall advise the inmate of its decision in writing, together with the reason(s) therefor, unless security considerations preclude their disclosure, in which case a notation as to the Inter-Institutional Classification Committee's (I.I.C.C.) reasons and an explanation of how security would be adversely affected, shall be placed in the inmate's file.

(f) If the Inter-Institutional Classification Committee (I.I.C.C.) decides to release the inmate from the Vroom Administrative Segregation Unit, it shall:

1. Assign him to the general population of an appropriate correctional facility;
2. Refer him to New Jersey State Prison's Management Control Unit Review Committee (M.C.U.R.C.) for assignment to the Management Control Unit (M.C.U.); or,
3. Refer him for a Protective Custody hearing.

(g) The inmate shall receive notice of the Inter-Institutional Classification Committee's (I.I.C.C.) decision.

(h) No inmate shall be retained in the Vroom Administrative Segregation Unit because of a reluctance on the part of a correctional facility to accept him.

Administrative correction, effective January 27, 1989.
See: 21 N.J.R. 558(a).
Institutional name change.

10A:5-3.6 Separate facilities

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

10A:5-3.7 Ventilation, heating, lighting, sanitation and observation

(a) Ventilation and reasonable temperature shall be maintained on a 24 hour basis.

(b) Light of sufficient intensity shall be maintained to allow visual observation of inmates at all times.

(c) Partial curtains may be permitted over the cell door, at the discretion of the Superintendent.

(d) When admitted, inmates shall not be placed in the cells that lack cleanliness or have malfunctioning sanitary fixtures or lights. Daily inspections shall be made to insure the cells are kept secure, clean and sanitary.

(e) Toilets that are flush controlled from outside the cells shall be flushed as often as is necessary to maintain good sanitary standards.

10A:5-3.8 Food

(a) Segregated inmates shall be served the normal correctional facility meals on the "Menu of the Day" or such special diet as shall be prescribed.

(b) Disposable utensils shall be used when necessary.

10A:5-3.9 Grooming, showering and shaving

(a) As needed, barbering and hair care services shall be provided.

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

10A:5-3.10 Medical and psychiatric services

(a) A member of the medical staff which can be a nurse, paramedic, doctor or other authorized health care personnel shall be available in the Administrative Segregation Unit on a daily basis to assess medical needs. Any inmate wishing to see a doctor shall notify the medical staff member or tier officer of his or her sick call request.

(b) Medical and psychiatric emergencies shall be attended to immediately. Requests for medical attention for inmates in non-emergency situations shall be responded to by the physician, or medical person designated by the physician, within 24 hours.

(c) Whenever it shall appear that an inmate is suffering from an emotional or psychiatric disturbance, arrangements shall be made for a psychiatric or psychological evaluation.

10A:5-3.11 Personal items

(a) All inmates admitted to a Non-Vroom Administrative Segregation Unit shall be permitted the same items and amounts of personal property (for example, TV's, radios, personal clothing, etc.) as inmates in the general population with the exception of those items which could pose a threat to the safety, security or orderly operation of the Administrative Segregation Unit. The Superintendent shall establish a list of permissible items for inmates in the Administrative Segregation Unit.

(b) Personal clothing shall not be permitted within the Vroom Administrative Segregation Unit. Disposition of personal items not permitted in Administrative Segregation shall be in accordance with N.J.A.C. 10A:1 ADMINISTRATION, ORGANIZATION AND MANAGEMENT.

10A:5-3.12 Correctional facility clothing, bedding and linen

(a) The issue and exchange of correctional facility clothing, bedding, linen, and the laundry services in the Non-Vroom Administrative Segregation Unit shall be on the same basis as available to the general inmate population.

(b) The issue and exchange of correctional facility bedding, linen, and the laundry services in the Vroom Administrative Segregation Unit shall be on the same basis as available to the general inmate population.

(c) The issue of correctional facility clothing to inmates in the Vroom Administrative Segregation Unit shall be limited to the list of permissible items (for example, jump suits, canvas type footwear, etc.) as established by the Superintendent and approved in writing by the Division of Adult Institutions' Assistant Commissioner.

(d) The policies and procedures for clothing issue and bedding and laundry services shall be in accordance with N.J.A.C. 10A:14, SANITATION AND HYGIENE.

10A:5-3.13 Inmate legal service

Legal services shall be made available to inmates assigned to an Administrative Segregation Unit. Legal services shall be in accordance with the provisions set forth in N.J.A.C. 10A:6, INMATE ACCESS TO COURTS.

10A:5-3.14 Reading material

Inmates in Administrative Segregation 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:5-3.15 Correspondence, visits and telephone calls

(a) Inmates in Administrative Segregation Units shall have the same correspondence opportunities as inmates in the general population.

(b) Each correctional facility which has an Administrative Segregation Unit shall provide each inmate in the Unit the opportunity to receive a minimum of one non-contact visit per week.

(c) Each correctional facility which has an Administrative Segregation Unit shall provide each inmate in the Unit the opportunity to make a minimum of one collect telephone call per week, excluding telephone calls of a legal nature.

10A:5-3.16 Recreation

(a) Where physical facilities permit, each inmate in an Administrative Segregation 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 who shall be retained in Administrative Segregation shall be given the opportunity for out-of-doors recreation for a minimum of one hour of the required five per week unless to do so would adversely affect the security or orderly operations of the correctional facility.

10A:5-3.17 Education

Educational programs shall be made available to inmates assigned to an Administrative Segregation Unit and who are desirous of participating in an educational program.

10A:5-3.18 Visits by professional and correctional supervising staff

(a) A member of the correctional facility social work staff shall make visits to the Administrative Segregation Unit five days per week and shall be available 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 the Administrative Segregation Unit as requested by individual inmates to provide religious counseling or other pastoral services.

(c) The supervisor in charge of the Administrative Segregation Unit shall make daily visits to the Unit and shall be available to interview individual inmates as requested.

(d) All inmates transferred to the Vroom Administrative Segregation Unit shall be counseled by the Unit's professional staff regarding the behavioral and attitudinal changes that are necessary if they are to gain release from the Unit.

10A:5-3.19 Work opportunities

Work opportunities shall be made available to inmates assigned to the Administrative Segregation Unit to the extent possible in light of security considerations, limited resources, availability of physical facilities and budgetary constraints.

10A:5-3.20 Psychological/psychiatric evaluations

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

1. The inmate's adjustment to his or her surroundings;
2. The likelihood of the inmate conforming his or her behavior to correctional facility rules and regulations; and,
3. The likelihood of the inmate posing a threat to the safe, orderly and secure operations of the correctional facility.

(b) The results of the evaluation shall be available to the Institutional Classification Committee (I.C.C.) for use in its periodic review of the inmate, or where applicable, to the Inter-Institutional Classification Committee (I.I.C.C.) for its periodic review of the inmate. This evaluation shall not preclude the Inter-Institutional Classification Committee (I.I.C.C.), Institutional Classification Committee (I.C.C.), or Special Administrative Segregation Review Committee (S.A.S.R.C.) from directing that additional evaluations be made where they deem it necessary.

10A:5-3.21 Withdrawal of personal items or activities

(a) Whenever, in the judgment of the officer in charge of the Administrative Segregation Unit, there is imminent danger that an inmate will destroy his or her clothing or any item usually permitted the inmate in his or her cell or will do injury to himself or herself, to another person or to property with such items, the officer 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 officer.

(b) Whenever an inmate is deprived of any usually authorized item or activity, a written report shall immediately be forwarded to the Superintendent or his or her designee and the supervisor of the Administrative Segregation Unit, identifying the inmate and the item or activity. In addition, the Special Administrative Segregation Review Committee (S.A.S.R.C.) or Vroom Administrative Segregation Review Committee, whichever shall be appropriate shall review any such restriction within one week. Any continued restriction shall be permitted only with the written authorization of the appropriate Review Committee.

(c) Such restrictions shall be reviewed on a weekly basis to determine whether there is reasonable certainty that the danger to person or property is no longer imminent and the restriction may be lifted.

10A:5-3.22 Selection of staff

All custody, treatment and administrative staff for Administrative Segregation Units shall be selected in accordance with Department of Civil Service 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:5-3.23 Records

(a) The following information on inmates confined in an Administrative Segregation Unit shall be available in the Unit for the use of the custodial staff:

1. Inmate's name and number;
2. Previous housing locations;
3. Unit cell or room assignments;
4. Date admitted;

5. Disciplinary charge leading to administrative segregation;

6. Special medical or psychiatric problems; and,

7. Date beyond which the inmate may not be retained in the Administrative Segregation Unit on the instant offense.

(b) All unusual behavior shall be noted in the Unit log book together with the time and date of the incident. Unusual incidents shall also be reported pursuant to N.J.A.C. 10A:21, REPORTS.

SUBCHAPTER 4. CAPITAL SENTENCE UNIT (C.S.U.)

10A:5-4.1 Scope

Persons sentenced to death pursuant to N.J.S.A. 2C:11-3 shall be assigned to the Capital Sentence Unit (C.S.U.) until such time that the execution is carried out or in the alternative, that the sentence is commuted or otherwise changed to a lesser penalty.

Case Notes

Two of three "special circumstances" necessary for *Pullman* abstention were present. *Biegenwald v. Fauver*, C.A.3 (N.J.)1989, 882 F.2d 748.

Even if all "special circumstances" supporting *Pullman* abstention were present, abstention was not warranted. *Biegenwald v. Fauver*, C.A.3 (N.J.)1989, 882 F.2d 748.

10A:5-4.2 Establishment of the Capital Sentence Unit (C.S.U.)

(a) The Commissioner shall designate a specific housing unit at New Jersey State Prison to be utilized solely for inmates under court imposed death sentence. There shall be no commingling of inmates in the Capital Sentence Unit (C.S.U.) with those in general population at New Jersey State Prison.

(b) Female inmates under death sentence shall be housed in a separate section of the C.S.U. designated by the Commissioner.

(c) Access to inmates in the C.S.U. shall be only as set forth in this subchapter and the post orders promulgated in connection herewith.

Administrative correction, effective January 27, 1989.
See: 21 N.J.R. 558(a).

Institutional name change.

Case Notes

Two of three "special circumstances" necessary for *Pullman* abstention were present. *Biegenwald v. Fauver*, C.A.3 (N.J.)1989, 882 F.2d 748.

Even if all "special circumstances" supporting *Pullman* abstention were present, abstention was not warranted. *Biegenwald v. Fauver*, C.A.3 (N.J.)1989, 882 F.2d 748.

10A:5-4.3 Admissions to the Capital Sentence Unit (C.S.U.)

(a) All male inmates shall be initially admitted at the intake unit of the Garden State Reception and Youth Correctional Facility.

(b) The Superintendent of the Garden State Reception and Youth Correctional Facility shall be responsible for developing written procedures to specify amounts and types of personal property on admission, medical screening, classification information and other relevant procedures.

(c) All intake procedures shall be completed at the Garden State Reception and Youth Correctional Facility and the inmate shall be transported to New Jersey State Prison as soon as is practicable.

(d) Prior to the escort vehicle's leaving the Garden State Reception and Youth Correctional Facility, the Superintendent or his or her designee shall telephone the New Jersey State Prison Superintendent's office to advise them of the time of departure and expected arrival time at New Jersey State Prison.

(e) Females shall be admitted directly to the Capital Sentence Unit of New Jersey State Prison. All intake procedures for female inmates shall be conducted at the New Jersey State Prison Intake Unit.

Administrative correction, effective January 27, 1989.

See: 21 N.J.R. 558(a).

Institutional name change.

10A:5-4.4 Capital Sentence Unit Management Team

(a) The Superintendent shall appoint a team of custody and support service personnel to supervise, monitor and provide for custody, security and services in the Capital Sentence Unit. This team shall be comprised of a:

1. Correction officer of the rank of Lieutenant or above, as Chairperson and Supervisor of the C.S.U.;
2. Psychologist;
3. Social worker;
4. Medical staff person;
5. Chaplain; and,
6. Such other staff as may be assigned by the Superintendent.

(b) In addition to delivery of services, the Supervisor of the C.S.U. shall be responsible for:

1. Maintaining a daily log;
2. Orientating new staff and inmates;

3. Supervising the proper use of restraints or force;
4. Conducting searches;
5. Preparing special reports concerning unusual incidents;
6. Supervising visits and telephone calls; and,
7. Other responsibilities as assigned by the Superintendent.

(c) The C.S.U. Management Team shall meet once per month, or more often as may be deemed necessary, to discuss problems, monitor delivery of services and share relevant information. A written summary of its deliberations shall be submitted to the Superintendent.

10A:5-4.5 Clothing, bedding and hygiene items

(a) Upon admission to C.S.U., the inmate shall receive one set of State issue clothing, bedding and hygiene items as set forth in the Capital Sentence Unit's post orders.

(b) The inmate may also receive, according to New Jersey State Prison rules and procedures, one:

- | | |
|------------|--------------------------|
| 1. TV set; | 3. Electric shaver; and, |
| 2. Radio; | 4. Typewriter. |

Administrative correction, effective January 27, 1989.
See: 21 N.J.R. 558(a).
Institutional name change.

10A:5-4.6 Reading materials

(a) Inmates in the Capital Sentence Unit (C.S.U.) may enjoy the same types and number of reading materials that are available to general population.

(b) The C.S.U. Management Team shall make the necessary arrangements to have sufficient reading materials available on the C.S.U.

10A:5-4.7 Showers

Each inmate shall be permitted a minimum of three showers per week.

10A:5-4.8 Recreation

(a) Inmates shall be provided with indoor recreation, and they shall be permitted outdoor recreation a minimum of three, and up to six times per week, weather and security considerations permitting.

(b) Depending on security considerations and individual behavioral problems, recreation may be alone or in small groups as designated by the Capital Sentence Unit (C.S.U.) Supervisor.

10A:5-4.9 Legal services

A staff person who has had paralegal training shall assist each inmate with legal materials and services, except that no assistance will be provided concerning any matter which is being handled by an attorney.

10A:5-4.10 Food packages; canteen

(a) Inmates in the Capital Sentence Unit (C.S.U.) will receive correctional facility meals. No additional food or food packages will be permitted from any source.

(b) If an inmate has sufficient funds in his or her inmate account, he or she may order snack items, cigarettes, stamps and hygiene items approved by the Superintendent or his or her designee, from the canteen.

Receipt of Petition for Rulemaking.
24 N.J.R. 4587(a).

10A:5-4.11 Religious counseling

(a) The New Jersey State Prison chaplain shall visit the Capital Sentence Unit (C.S.U.) at least once per week to minister to inmate's individual religious needs or to collect inmate's written requests for religious counseling.

(b) Upon written request, the chaplain shall arrange for individual religious counseling by a New Jersey State Prison staff minister of the inmate's faith on a weekly basis.

(c) In any case where there is no New Jersey State Prison staff person available, outside clergy of the inmate's faith may be permitted by means of a window visit only, provided he or she has passed a security check in accordance with correctional facility procedures. Auditory privacy shall be permitted during these visits, but visual surveillance will be maintained.

(d) During the 72 hour period immediately preceding the inmate's execution, religious counseling shall be permitted as set forth in N.J.A.C. 10A:16-10 LETHAL INJECTION.

Administrative correction, effective January 27, 1989.
See: 21 N.J.R. 558(a).
Institutional name change.

10A:5-4.12 Barber

A staff person assigned by the Superintendent or his or her designee shall provide barber services to inmates in the Capital Sentence Unit (C.S.U.) once per month.

10A:5-4.13 Medical services

(a) Upon admission, each inmate shall be given a physical and psychological examination.

(b) A correctional facility physician assigned by the Superintendent shall conduct a physical examination of each inmate in the Capital Sentence Unit (C.S.U.) every six months. The physician shall report to the Superintendent any unusual medical condition which may require specialized treatment or further evaluation.

(c) The medical staff person assigned to the C.S.U. Management Team, or alternate assigned by the Superintendent or his or her designee, shall visit the C.S.U. daily or as often as may be necessary, to dispense medication and to evaluate individual medical needs.

(d) All medications except topical ointments, salves and lotions, shall be dispensed in liquid form or by injection.

Case Notes

Finding that inmate was dangerous to himself or others was supported by evidence. Matter of Savage, 233 N.J.Super. 356, 558 A.2d 1357 (A.D.1989), certification denied 122 N.J. 348, 585 A.2d 360.

Mentally ill inmate did not have to be transferred from prison to mental hospital for psychiatric treatment in absence of undue prejudice to inmate. Matter of Savage, 233 N.J.Super. 356, 558 A.2d 1357 (A.D.1989), certification denied 122 N.J. 348, 585 A.2d 360.

Mentally ill inmate who was under a death sentence was not entitled to rights available to involuntary committee. Matter of Savage, 233 N.J.Super. 356, 558 A.2d 1357 (A.D.1989), certification denied 122 N.J. 348, 585 A.2d 360.

10A:5-4.14 Sanitation

(a) Capital Sentence Unit (C.S.U.) staff shall be responsible for general sanitary maintenance of the C.S.U.

(b) Each inmate shall be responsible to clean his or her individual cell according to New Jersey State Prison rules.

Administrative correction, effective January 27, 1989.

See: 21 N.J.R. 558(a).

Institutional name change.

10A:5-4.15 Psychological and psychiatric services

(a) The C.S.U. Management Team psychologist shall monitor the condition of the inmates in the Capital Sentence Unit (C.S.U.) and shall make such recommendations, concerning the need for further evaluation or treatment, to the Superintendent and the C.S.U. Management Team as are appropriate.

(b) The psychologist shall file a written report concerning each inmate's psychological condition once every three months.

(c) In those cases where the psychologist believes the inmate is in need of additional evaluation or treatment, the psychologist shall refer the inmate to the facility psychiatrist. The psychiatrist shall examine the inmate and prescribe the needed treatment or medication.

(d) Inmates taking anti-psychotic drugs shall be examined by the psychiatrist at least once per month, and the psychiatrist shall file a written report of each examination.

(e) Prior to prescribing any anti-psychotic drug or sedative, the facility psychiatrist shall consult with the Department's Chief Medical Consultant to insure that the prescribed medication will not have an undesirable effect on death sentence procedures which may be scheduled. All anti-psychotic drugs or sedatives shall be dispensed in liquid form or by injection.

Case Notes

Finding that inmate was dangerous to himself or others was supported by evidence. Matter of Savage, 233 N.J.Super. 356, 558 A.2d 1357 (A.D.1989), certification denied 122 N.J. 348, 585 A.2d 360.

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10A:5-4.16 Visits and telephone use

(a) Each inmate in the Capital Sentence Unit (C.S.U.) shall have the opportunity for two non-contact visits per week with a member (up to two persons) of his or her family.

(b) Family members are defined as those set forth in N.J.S.A. 30:4-8.1 (father, mother, husband, wife, child, brother or sister) or a person with whom the inmate has shared a significant family-like relationship prior to his or her being sentenced under N.J.S.A. 2C:11-3. Whether such person meets this criteria shall be at the discretion of the Superintendent.

(c) Upon the written request of an inmate, a member of the press may be permitted to visit the inmate. Such visits shall be arranged at least 48 hours in advance through the Department's Public Information Officer, and shall be non-contact visits only.

(d) Contact visits as are necessary shall only be permitted to the inmate's attorney-of-record only. Such visits shall be arranged at least 24 hours in advance by notice of the attorney to the Superintendent's office.

(e) All visits shall be arranged and conducted according to correctional facility rules and are subject to cancellation as warranted by security and the orderly operation of the C.S.U.

(f) The Superintendent or his or her designee shall establish a schedule to permit each inmate to make a minimum of one collect telephone call per week to a person on the

inmate's approved visit list or other member of his or her immediate family only.

(g) All personal telephone calls shall be monitored.

(h) The inmate may place such collect telephone calls as are needed to his or her attorney-of-record. Custody staff shall take whatever steps are deemed necessary by the Superintendent or his or her designee to insure that the person accepting the collect call is the inmate's attorney.

(i) Telephone calls of a legal nature shall not be monitored.

10A:5-4.17 Work assignments

Work opportunities shall be made available to inmates assigned to the Capital Sentence Unit (C.S.U.) to the extent possible in the light of security considerations, limited resources and budgetary constraints.

10A:5-4.18 Correspondence

(a) Inmates in the Capital Sentence Unit (C.S.U.) shall have the same correspondence opportunities that are available to those in the general population. All mail may be carefully screened for evidence of escape plans and searched for contraband. Legal mail shall be processed as set forth in N.J.A.C. 10A:18, MAIL, VISITS AND TELEPHONE.

(b) Custody staff shall examine purported legal mail to insure that it does in fact originate from or is directed to a source defined in N.J.A.C. 10A:18, MAIL, VISITS AND TELEPHONE and that it contains no contraband.

10A:5-4.19 Records in the Capital Sentence Unit (C.S.U.)

(a) The following information on inmates confined in the Capital Sentence Unit (C.S.U.) shall be available on the C.S.U. for the use of staff:

1. Inmate's name and number;
2. Cell assignment;
3. Date admitted;
4. Disciplinary, medical or psychological problems;
5. List of approved visitors and telephone calls; and,
6. Name, address and telephone number of the inmate's attorney-of-record.

(b) All unusual behavior shall be noted in the C.S.U. log book together with date and time of the incident. Unusual incidents shall be reported pursuant to N.J.A.C. 10A:21, REPORTS.

10A:5-4.20 Disciplinary hearings

(a) Disciplinary hearings shall be heard by an Adjustment Committee and shall be held on the Capital Sentence Unit (C.S.U.) in a place designated by the Superintendent or his or her designee.

(b) In the event the inmate requests paralegal assistance at the hearing, the staff person assigned to assist the C.S.U. inmates with legal services shall provide this assistance. The hearing shall not be unreasonably delayed by reason of an inmate's request for paralegal assistance.

(c) Sanctions which may be imposed are those which do not conflict with the custody, security or objectives of the C.S.U. (for example, no loss of commutation time may be imposed).

10A:5-4.21 News media contact

News media contact shall be in accordance with N.J.A.C. 10A:19, NEWS MEDIA CONTACTS WITH CORRECTIONAL FACILITIES AND INMATES.

10A:5-4.22 Post orders

(a) Trenton State Prison shall develop post orders consistent with this Subchapter.

(b) Post orders shall be submitted, before September 15 of each year, to the Office of the Deputy Commissioner for his or her approval and for review by the Special Assistant for Legal Affairs.

10A:5-4.23 Training

(a) All staff and alternates selected for assignment to the Capital Sentence Unit (C.S.U.) shall be given training in management, custody support services and procedures before being assigned to the C.S.U.

(b) In the event of an emergency, at the discretion of the Superintendent, other staff may be temporarily assigned as are deemed necessary.

(c) Orientation of new inmates assigned to C.S.U. shall be accomplished pursuant to correctional facility rules as set forth in the post orders.

SUBCHAPTER 5. PROTECTIVE CUSTODY

10A:5-5.1 Admission to Protective Custody

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

1. On the recommendation of the Inter-Institutional Classification Committee (I.I.C.C.);

2. On the recommendation of a sentencing court or prosecutor, subject to approval of the Superintendent. The recommendation must be accompanied by a statement of justifiable reasons to support such placement;

3. On the recommendation of a prison non-custody staff person or a custody staff member of the rank of Sergeant or above. Emergency placement shall be reviewed and approved within 24 hours by the Shift Supervisor;

4. On the order of the Superintendent; Assistant Commissioner, Division of Adult Institutions; Deputy Commissioner; or Commissioner; or,

5. Voluntarily, on the inmate's request.

(b) If an inmate voluntarily requests placement in Protective Custody, he or she must fill out and sign Form 146-I VOLUNTARY-PROTECTIVE CUSTODY CONSENT in which his or her reasons for requesting Protective Custody are stated. If the inmate's reasons cannot be verified or are deemed frivolous by the Superintendent or his or her designee, placement in Protective Custody may be denied or the inmate released.

(c) In all cases of involuntary placement in Protective Custody, the Superintendent or his or her designee shall gather facts, information and available documentation to support or reject the request and shall order such additional investigation as is deemed necessary for a clear understanding of the case.

Case Notes

Regulations governing confinement of inmates in involuntary protective custody gave rise to liberty interest. *Banks v. Fauver*, D.N.J.1992, 801 F.Supp. 1422.

Civil contemnor held in state institution was entitled to placement in protective custody. *Matter of State Grand Jury Investigation re Acceturo*, 242 N.J.Super. 281, 576 A.2d 900 (A.D.1990), certification denied 127 N.J. 324, 604 A.2d 599.

10A:5-5.2 Hearing procedure for involuntary placement to Protective Custody

(a) An inmate under consideration for placement in Protective Custody shall be given written notice on Form 146-II NOTICE OF PROTECTIVE CUSTODY HEARING—INVOLUNTARY as soon as practicable.

(b) An inmate in emergency Protective Custody shall be given written notice on form 146-II NOTICE OF PROTECTIVE CUSTODY HEARING—INVOLUNTARY no later than three working days after emergency placement.

(c) The written notice shall be given to the inmate at least 24 hours prior to the in-person hearing. The notice shall be signed by the staff person delivering it and the date and time of delivery shall be noted.

(d) The notice shall include the following:

1. Statement of reasons utilized by the administration to initiate the Protective Custody hearing procedure;

2. Date of the Protective Custody hearing; and,

3. Notification that the inmate may present any relevant evidence supporting or contesting placement in Protective Custody.

(e) Evidence may consist of:

1. Witnesses' written statements;

2. Documents bearing on the nature of threat of harm involved; or,

3. Other facts relevant to the need or lack of need for placement in Protective Custody.

(f) At the time of receipt of the notice, the inmate shall be given the opportunity to present the basis for any opposition to involuntary placement in Protective Custody. The inmate shall not, however, be required to make any statement at this time. The information contained in the notice, together with any statement or evidence provided by the inmate at the time of receipt of the notice, shall be reviewed by the Superintendent or his or her designee immediately to determine whether, pending the completion of a thorough investigation, there is a reasonable basis to conclude that the inmate is in need of Protective Custody.

(g) Illiterate inmates or inmates otherwise unable to marshal the facts shall receive the assistance of a counsel substitute assigned by the Disciplinary Hearing Officer/Adjustment Committee or Superintendent. An interpreter shall be utilized, if needed, at the discretion of the Disciplinary Hearing Officer/Adjustment Committee.

(h) The Disciplinary Hearing Officer/Adjustment Committee shall have the discretion to keep the hearing within reasonable limits and to refuse to permit the collection and presentation of evidence which is not necessary for an adequate understanding of the case. The Disciplinary Hearing Officer/Adjustment Committee may order further investigation and reports where deemed necessary and shall exercise control over all presentations to prevent lack of relevancy, harassment, abuse or repetitiveness and to insure that the hearing does not develop into an adversary proceeding.

(i) Inmates placed in emergent Protective Custody or under consideration for placement in Protective Custody shall receive a hearing within 20 working days after receipt of the notice unless there are exceptional circumstances, unavoidable delays or reasonable postponements.

(j) At the hearing, the inmate shall be informed of all information bearing on his or her case, with the exception of information designated "confidential"; or

(k) Confidential information may consist of the following:

1. Informants' reports;
2. Professional reports (for example, psychiatrists, psychologists, social workers, teachers, etc.); or,
3. Other information which would have an adverse impact on the inmate's mental health, create a serious risk of reprisal against the reporting person or seriously impede progress on a pending investigation.

(l) When reviewing confidential informant information, the Disciplinary Hearing Officer/Adjustment Committee shall inquire into the reliability of the informant and the information, and shall utilize such information only after satisfied that it is reasonably reliable. Whenever informant information is used, the inmate shall be informed of the general character of the information, if practicable. The details of informant information shall be withheld on grounds of confidentiality.

1. In any case in which the Disciplinary Hearing Officer or Adjustment Committee's decision is based on evidence which includes confidential information, adjudication shall contain:

i. A concise summary of the facts on which the Disciplinary Hearing Officer or Adjustment Committee concluded that the informant was credible or his or her information reliable; and

ii. The informant's statement (either in writing or as reported) in language that is factual rather than a conclusion, and based on the informant's knowledge of the matters contained in such statement.

2. The Disciplinary Hearing Officer or Adjustment Committee is not permitted to disclose the identity of the informant.

(m) Within 10 working days of the hearing, the Disciplinary Hearing Officer/Adjustment Committee shall provide a written notice of decision and a summary of the evidence relied upon.

Correction: (k)1 and 2 added to text. Was omitted from Register October 6, 1986.

See: 18 N.J.R. 2218(a).

Amended by R.1987 d.319, effective August 3, 1987.

See: 19 N.J.R. 842(a), 19 N.J.R. 1454(c).

Added new (f). Redesignated (f)-(l) as (g)-(m). Hearing notice changed from 10 to 20 working days.

Amended by R.1989 d.46, effective January 17, 1989.

See: 20 N.J.R. 2746(b), 21 N.J.R. 163(b).

Deleted "of guilt" from (l)1.

Case Notes

Regulations governing confinement of inmates in involuntary protective custody gave rise to liberty interest. *Banks v. Fauver*, D.N.J.1992, 801 F.Supp. 1422.

Due process was satisfied by informal procedures adopted by prison. *Banks v. Fauver*, D.N.J.1992, 801 F.Supp. 1422.

Reliance on anonymous caller's tip to justify involuntary protective confinement of inmate did not deprive inmate of due process. *Banks v. Fauver*, D.N.J.1992, 801 F.Supp. 1422.

10A:5-5.3 Appeal procedures for Protective Custody placement

(a) The inmate shall be advised of the opportunity to appeal to the Superintendent or his or her designee at the time that he or she is provided with the Protective Custody hearing decision (Form 146-III PROTECTIVE CUSTODY HEARING ADJUDICATION).

(b) The inmate shall have five working days from the date he or she receives the Protective Custody decision to submit a letter of appeal.

(c) All appeals shall be reviewed by the Superintendent and the following factors shall be considered:

1. Whether there was compliance with this subchapter;
2. Whether the decision was based on reliable information; and
3. Whether the decision to place the inmate in Protective Custody was justifiable considering the inmate's safety and the continued secure, orderly operation of the correctional facility.

(d) Within 10 working days of receipt of the appeal, the Superintendent may:

1. Approve the Disciplinary Hearing Officer/Adjustment Committee's decision;
2. Modify the Disciplinary Hearing Officer/Adjustment Committee's decision; or,
3. Order further hearings.

(e) In all cases, the inmate shall be notified in writing of the Superintendent's decision.

10A:5-5.4 Review of inmates in Non-Vroom Protective Custody Units

(a) Each inmate in Protective Custody, whether voluntary or involuntary, shall be reviewed every three months, or more often if feasible, by the Institutional Classification Committee (I.C.C.).

(b) An inmate who is placed in Protective Custody involuntarily shall, in every case, have an in-person hearing once per year in accordance with procedures specified in N.J.A.C. 10A:5-5.2 and N.J.A.C. 10A:5-5.3.

10A:5-5.5 Release of inmates from Non-Vroom Protective Custody Units

(a) An inmate who has voluntarily signed himself or herself into Protective Custody may sign himself or herself out upon completion of a release form, provided the Institutional Classification Committee (I.C.C.) and the Superintendent or his or her designee are satisfied that there is no known danger to the inmate's well being.

(b) An inmate who has been placed in Protective Custody involuntarily may be released by the Superintendent or his or her designee, upon recommendation by the Institutional Classification Committee (I.C.C.) when they are satisfied that the conditions giving rise to the inmate's placement in Protective Custody have abated or do not exist.

(c) Inmates released from involuntary Protective Custody shall, when appropriate, be referred to the Inter-Institutional Classification Committee (I.I.C.C.) for assignment to a suitable correctional facility.

10A:5-5.6 Transfer to the Vroom Protective Custody Unit

(a) Transfer of inmates to the Vroom Protective Custody Unit, whether emergent or based on the Disciplinary Hearing Officer/Adjustment Committee's recommendation, shall be reviewed by the Inter-Institutional Classification Committee (I.I.C.C.).

(b) The Inter-Institutional Classification Committee (I.I.C.C.) shall review the evidence and the Disciplinary Hearing Officer/Adjustment Committee's decision based on the following criteria:

1. Whether the decision to place the inmate in the Vroom Protective Custody Unit was based on substantial evidence of serious threat of harm should the inmate remain in general population; and,
2. Whether alternative housing locations, was not feasible based on classification criteria or because sufficient protection could not be reasonably assured.

10A:5-5.7 Periodic review of inmates in the Vroom Protective Custody Unit

(a) Each inmate in the Vroom Protective Custody Unit shall be reviewed by the Vroom Classification Committee once each month. This review shall not necessitate the inmate's presence although the Committee may, where it deems necessary, require the inmate to appear unless the inmate refuses to appear without the use of force.

(b) The purpose of this review shall be to ascertain the continued need or change, if any, in circumstances requiring the inmate's continued retention in the Vroom Protective Custody Unit.

10A:5-5.8 Formal review of inmates in the Vroom Protective Custody Unit

One year from the date of the initial Disciplinary Hearing Officer/Adjustment Committees' decision to place an inmate in the Vroom Protective Custody Unit, and every twelve months thereafter, an inmate shall be given a formal hearing in accordance with procedures specified in N.J.A.C. 10A:5-5.2 and N.J.A.C. 10A:5-5.3.

10A:5-5.9 Release of inmates from the Vroom Protective Custody Unit

(a) The Vroom Classification Committee may grant the inmate's release subject to the Superintendent's approval when it concludes that:

1. The initial circumstances creating the need for placement in the Vroom Protective Custody Unit no longer exist; and,
2. Release from the Vroom Protective Custody Unit will not pose a threat to the inmate's safety or well being or to the safe, secure orderly operation of the correctional facility.

10A:5-5.10 Ventilation, heating, lighting, sanitation, observation

(a) Ventilation and reasonable temperature shall be maintained on a 24 hour basis. Light of sufficient intensity (100 watts if requested) and if compatible with existing electrical load capacity shall be maintained to allow visual observations of inmates at all times. Partial curtains may be permitted over the cell door, at the discretion of the Superintendent.

(b) When admitted, inmates shall not be placed in cells that lack cleanliness or have malfunctioning sanitary fixtures or lights. Daily inspections shall be made to insure the cells are kept secure, clean and sanitary.

(c) Toilets that are flush controlled from outside the cells shall be flushed as often as is necessary to maintain good sanitary standards.

10A:5-5.11 Food

(a) Protective Custody inmates shall be served the normal correctional facility meals on the "Menu of the Day" or such special diet as shall be prescribed.

(b) Disposable utensils shall be used when necessary.

10A:5-5.12 Grooming, showering and shaving

(a) Barbering and hair care services shall be provided as needed.

(b) Each inmate in Protective Custody shall be given the opportunity to shave and shower not less than three times per week, unless permitting these activities would present an undue security hazard.

10A:5-5.13 Medical services

(a) A member of the medical staff, which can be a nurse, paramedic, doctor or other authorized health care personnel, shall be available in the Unit on a daily basis to assess medical needs. Any inmate wishing to see a doctor shall notify the medical staff member or the housing officer of his or her sick call request.

(b) Medical and psychiatric emergencies shall be attended to immediately. Requests for medical attention for inmates in non-emergency situations shall be responded to by the physician or medical person designated by the physician within 24 hours.

10A:5-5.14 Personal items

(a) All inmates shall be admitted to Protective Custody dressed in normal correctional facility clothing after a thorough search for contraband.

(b) Each inmate shall be provided with the following items for use in the cell to the same extent as such items are provided for inmates in the general population:

1. Clothing required for use in cell;
2. Bedding and mattresses;
3. Personal hygiene supplies (including soap, deodorant, toothbrush, toothpaste or powder, towel and toilet paper);
4. Utensils and supplies for cleaning cell;
5. Eyeglasses; and,
6. Writing materials.

(c) The possession and use of radios, televisions, typewriters and other appliances in Protective Custody shall be subject to the same guidelines as those developed by the Superintendent for the general population.

(d) Written procedures shall be in effect permitting inmates access to books and periodicals from the correctional facility's library and Inmate Law Library.

10A:5-5.15 Correctional facility clothing, bedding and linen

The issue and exchange of correctional facility clothing, bedding, linen, and the laundry service shall be on the same basis as is available to the general inmate population.

10A:5-5.16 Inmate legal services

Inmates in Protective Custody shall be afforded legal access to courts pursuant to N.J.A.C. 10A:6, INMATE ACCESS TO COURTS.

10A:5-5.17 Correspondence, visits and telephone calls

(a) Inmates in Protective Custody shall have the same correspondence opportunities that are available to inmates in the general population.

(b) Each correctional facility which has a Protective Custody Unit shall provide each inmate in the Unit with the opportunity to receive a minimum of one window visit per week, unless precluded by security conditions or other extraordinary circumstances.

(c) An inmate who has completed seven consecutive years in the Vroom Protective Custody Unit may request permission to receive one contact visit per month in addition to the regularly scheduled window visits. Unless precluded by security problems or other emergent circumstances, such visits shall be arranged.

(d) Each correctional facility which has a Protective Custody 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.

10A:5-5.18 Recreation

(a) Where physical facilities permit, each inmate in Protective Custody 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 who shall be retained in Protective Custody shall be given the opportunity for out-of-doors recreation for a minimum of one hour of the required five hours per week unless to do so would adversely affect the security or orderly operations of the correctional facility.

10A:5-5.19 Education

(a) A member of the educational staff shall be assigned to develop individualized educational programs for inmates who are assigned to Protective Custody if they so desire.

(b) The educational opportunities available to inmates in Protective Custody shall be comparable to those available to inmates in general population to the extent possible in light of available resources, space constraints and security precautions.

10A:5-5.20 Visits by professional and correctional supervisory staff

(a) A member of the correctional facility social work staff shall make visits to the Protective Custody Unit five days per week and shall be available to interview individual inmates as requested. When appropriate, referrals to other departments or staff members shall be made.

(b) The correctional facility chaplain shall visit the Protective Custody Unit as requested by individual inmates to provide religious counseling or other pastoral services.

(c) The Unit supervisor or his or her designee in charge of the Protective Custody Unit shall make daily visits to the Unit and shall be available to interview individual inmates as requested.

10A:5-5.21 Work opportunities

Work opportunities shall be made available to inmates assigned to a Protective Custody Unit to the extent possible in light of security considerations, limited resources, availability of physical facilities and budgetary constraints.

10A:5-5.22 Psychological examination

Every inmate assigned to a Protective Custody Unit shall have a psychological examination every six months or whenever it appears that he or she is suffering from an emotional or psychological disorder.

10A:5-5.23 Withdrawal of personal items or activities

(a) Whenever in the judgment of the custody supervisor of the Protective Custody Unit there is imminent danger that an inmate will destroy his or her clothing or any item usually permitted the inmate in his or her cell or will do injury to himself or herself, to another person or to property with such items, an officer of the rank of Sergeant or above may deprive the inmate of such items, if practicable. In such case, however, 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 officer.

(b) Whenever an inmate is deprived of any usually authorized item or activity, a written report shall immediately be forwarded to the Superintendent or his or her designate and the supervisor of the Protective Custody Unit identifying the inmate and the item.

(c) The Institutional Classification Committee (I.C.C.) shall review any such restriction within one week. Any continued restriction shall be permitted only with the written authorization of the Institutional Classification Committee (I.C.C.).

(d) Such restrictions shall be reviewed on a weekly basis to determine whether there is reasonable certainty that the danger to person or property is no longer imminent and the restriction may be lifted.

10A:5-5.24 Selection of staff

All custody treatment and administrative staff for Protective Custody Units shall be selected in accordance with Department of Civil Service regulations and the terms and conditions of all collective bargaining arrangements and contracts entered into between the various working units and the Department of Corrections.

10A:5-5.25 Records

(a) The following information on inmates confined to Protective Custody shall be available in the Unit for the use of appropriate staff members:

1. Inmate's name and number;
2. Religion;
3. Previous housing location;
4. Unit cell or room assignment;
5. Date admitted;
6. Special medical or psychiatric problems; and

7. Date on which yearly review hearing is required.

(b) All unusual behavior shall be noted in the Unit log book together with the time and date of the incident. Unusual incidents shall also be reported pursuant to N.J.A.C. 10A:21 REPORTS.

10A:5-5.26 Disciplinary action within Protective Custody Units

The rules set forth in N.J.A.C 10A:4, INMATE DISCIPLINE shall be in full force and effect in the Protective Custody Units.

10A:5-5.27 Transfers; record maintenance

All transfers into or out of a Protective Custody Unit shall be entered on the inmate's classification progress record.

10A:5-5.28 Correctional facility procedures

(a) Each correctional facility which has a Protective Custody Unit shall be responsible for developing written post orders/procedures consistent with this Subchapter.

(b) These written post orders/procedure shall be forwarded to the Department of Corrections' Office of the Deputy Commissioner for review and approval on or before September 15 of each year.

SUBCHAPTER 6. TRANSITIONAL PROTECTIVE CUSTODY
10A:5-6.1 Criteria for eligibility

(a) The criteria for consideration of assignment of inmates to the Transitional Protective Custody Unit are:

1. Present assignment to a Protective Custody Unit either voluntarily or on the recommendation of a Disciplinary Hearing Officer/Adjustment Committee;
2. Conduct and attitude demonstrated by the inmate that he may be able to modify his behavior sufficiently to enable him to successfully reintegrate into general population; and,
3. Conclusions by the correctional facility Internal Affairs Unit and the Superintendent that the inmate will be in no danger as a result of previous or present threats against his well-being at the facility to which he is ultimately assigned.

10A:5-6.2 Sentence considerations

(a) An inmate's maximum sentence shall not be a factor when he is being considered for assignment to the Transitional Protective Custody Unit.

(b) An inmate's maximum sentence shall be a factor when he is being considered for transfer from the Transitional Protective Custody Unit to the general population of a correctional facility.

10A:5-6.3 Admission

(a) The Institutional Classification Committee (I.C.C.) of the facility where the inmate is presently assigned to a Protective Custody Unit and the Bayside State Prison I.C.C. shall meet to identify and select inmates who may be transferred to the Transitional Protective Custody Unit at the Bayside State Prison. The transfer of an inmate, selected by the Committees, must be approved by the Superintendent of the sending correctional facility and the Inter-Institutional Classification Committee (I.I.C.C.) before the transfer is made.

(b) Joint Institutional Classification Committee (I.C.C.) meetings shall be held as often as is needed to consider inmates for transfer to the Transitional Protective Custody Unit.

Administrative correction, effective January 27, 1989.
See: 21 N.J.R. 558(a).
Institutional name change.

10A:5-6.4 Program

(a) Inmates assigned to the Transitional Protective Custody Unit shall be afforded the opportunity to have contact visits, work assignments (as are available) and a recreational program modified to meet their individual need for protection or supervision.

(b) Escorts shall be provided during each program component as deemed advisable by the Superintendent.

10A:5-6.5 Review and transfer

(a) Each inmate assigned to the Transitional Protective Custody Unit shall be reviewed by the Bayside State Prison Institutional Classification Committee once every three months.

(b) The Bayside State Prison Institutional Classification Committee shall determine whether the inmate has demonstrated by his conduct, attitude and participation in activities, that he can satisfactorily be placed into the general population of a correctional facility.

(c) If the Bayside State Prison Institutional Classification Committee (I.C.C.) determines that the inmate can satisfactorily be placed into the general population of a correctional facility, the I.C.C. shall submit its decision, for release from the Transitional Protective Custody Unit, to the Superintendent of Bayside State Prison or his or her designate for approval.

(d) If the Bayside State Prison Institutional Classification Committee (I.C.C.) determines that the inmate is unable to be satisfactorily placed into the general population of a correctional facility, he shall be reassigned to a Protective Custody Unit pursuant to the procedures set forth in N.J.A.C. 10A:5-5 PROTECTIVE CUSTODY.

(e) All recommendations for reassignment shall be submitted to the Inter-Institutional Classification Committee (I.I.C.C.) for approval and selection of a suitable correctional facility.

Administrative correction, effective January 27, 1989.
See: 21 N.J.R. 558(a).
Institutional name change.

10A:5-6.6 Services and conditions

All conditions of confinement and correctional facility services set forth in 10A:5-5, PROTECTIVE CUSTODY shall be afforded inmates in the Transitional Protective Custody Unit.

10A:5-6.7 Post orders

(a) Each sending correctional facility and Bayside State Prison shall develop written procedures and Post Orders consistent with this Subchapter to implement the Transitional Protective Custody Program.

(b) These procedures and post orders shall be submitted for review and approval as to custody, program and legal sufficiency to the Office of the Deputy Commissioner and Assistant Commissioner of Adult Institutions on or before September 15 of each year.

Administrative correction, effective January 27, 1989.
See: 21 N.J.R. 558(a).
Institutional name change.

SUBCHAPTER 7. TEMPORARY CLOSE CUSTODY

Authority

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

Source and Effective Date

R.1992 d.365, effective September 21, 1992.
See: 24 N.J.R. 1676(a), 24 N.J.R. 3314(a).

10A:5-7.1 Placement in temporary close custody

(a) An inmate may be placed in temporary close custody for a period not to exceed 72 hours, unless exceptional circumstances, such as other information received or other substantial evidence found, warrant extension of this time period.

(b) Criteria for placement of an inmate in temporary close custody status are:

1. Reasonable suspicion exists to indicate that the inmate is engaged in, or is planning a serious violation (asterisked offenses under N.J.A.C. 10A:4-4.1(a)) of correctional facility rules, on which disciplinary action is considered premature;

2. Reasonable suspicion exists to indicate that the inmate is in possession of, or plans to obtain, contraband which may pose a danger to the inmate or others;

3. The inmate exhibits assaultive, self-mutilating and/or threatening behavior related to a medical or psychiatric condition, in the written opinion of a psychiatrist, psychologist or medical doctor; and/or

4. Any other reason, which, in the opinion of the Superintendent, or his or her designee, requires temporary close custody confinement to protect the inmate, staff, general public, and/or the security and control of the correctional facility.

(c) When placement of an inmate in temporary close custody is ordered by the Superintendent's designee, the designee shall, as soon as possible, within 72 hours inform the Superintendent and shall provide a written report to the Superintendent setting forth the reason for every such placement.

(d) On or before the expiration of the 72 hour period, unless there are emergent reasons for extension, the inmate shall be released from temporary close custody to:

1. General population;

2. Pre-hearing detention;

3. Detention in connection with a disciplinary action pursuant to N.J.A.C. 10A:4;

4. A medical or psychiatric housing unit for continued observation, treatment, or commitment procedures (N.J.A.C. 10A:16-13); or

5. Another close custody unit in accordance with procedures set forth in this chapter, such as, Protective Custody, Management Control Unit.

(e) Release from temporary close custody may be ordered only by the Superintendent or his or her designee.

(f) In consideration of the reason for an inmate's placement in temporary close custody, the chief custody officer, or his or her designee, shall determine the personal property and other services, such as visits and telephone calls, which the inmate may be afforded while in temporary close custody.

(g) The Superintendent shall forward a monthly written report to his or her designated Assistant Commissioner for review of all placements and releases from temporary close custody.