

## HUMAN SERVICES

### (a)

#### DIVISION OF DEVELOPMENTAL DISABILITIES

##### Notice of Readoption Moderate Security Unit

##### Readoption: N.J.A.C. 10:42B

Authorized By: Sarah Adelman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4-25.13 et seq.

Effective Date: February 23, 2023.

New Expiration Date: February 23, 2030.

**Take notice** that pursuant to N.J.S.A. 52:14B-5.1, the rules at N.J.A.C. 10:42B were scheduled to expire on April 1, 2023. The purpose of N.J.A.C. 10:42B is to establish a procedure for admission, retention, and release of individuals served by the Division of Developmental Disabilities (Division) in the Moderate Security Unit (MSU).

The MSU is a treatment unit for men with developmental disabilities who have been convicted of a crime or who have engaged in criminal behavior, with therapeutic programs specializing in sex offender and arson-related treatment. It is a locked facility used as an alternative to incarceration in a State or county correctional facility.

Subchapter 1 sets forth the MSU's purpose, as described above, scope, and the definitions of terms used throughout the rules.

Subchapter 2 makes clear that admission to the MSU shall take place upon the order of a court of competent jurisdiction, and that an individual cannot voluntarily admit himself to the MSU.

Subchapter 3 sets forth the procedures prior to admission to the MSU. If a court advises the Division that an individual who may be eligible for Division services is involved in a criminal proceeding, the Division shall make an eligibility determination pursuant to N.J.A.C. 10:46. If the individual is determined eligible, or had been determined eligible prior to the criminal proceedings, the MSU Director will determine whether the individual is appropriate for and will benefit from admission to the MSU, and whether a vacancy exists. The subchapter directs the MSU Director to advise the court of their determination, and request a court order if admission is appropriate. An option also exists for the MSU Director to request admission for a time-specific period for evaluation, if the Director is not certain whether the individual will benefit from admission.

Subchapter 4 concerns admission to the MSU after the Director has advised the court that the individual may be admitted to the facility. It sets forth the circumstances under which a court may order that an individual be housed at and participate in the program at the MSU, namely, as a condition of probation; until disposition of the criminal charges; or into the care and custody of the Commissioner of Human Services, if the court finds that the individual is not fit to proceed to trial pursuant to N.J.S.A. 2C:4-6.

Subchapter 5 requires that the court shall review the order to admit an individual to the MSU at least every six months. Seven days prior to the court review, the MSU Director shall provide a written report regarding the status and progress of the individual. The Director is to provide the report to the court, the individual, legal guardian, if applicable, and other delineated parties. In the case of an individual admitted to the MSU as a condition of probation, the Director may recommend to the court that the individual be transferred to a less restrictive setting. An individual on probation may not be transferred except by court order.

Subchapter 6 sets forth the provisions for release from the MSU. An individual is to be released from the MSU when his probation ends, or his commitment to the care and custody to the Commissioner ends, or upon disposition of pending criminal charges. At least six months before the individual's anticipated release, the Director is to advise the individual that he may request Division services after his release. A service plan is to be developed at least 60 days prior to release. An individual may choose not to receive Division services upon release. The subchapter contains processes should the individual make this choice.

If the individual to be released has committed a sexually violent offense, as defined at N.J.S.A. 30:4-27.26, the Director shall require that the individual be evaluated for possible referral for commitment under the Sexually Violent Predator Law. The subchapter contains the procedures should this provision apply. Last, the subchapter contains procedures that apply if the individual is required to register pursuant to Megan's Law.

Subchapter 7 sets forth that nothing in the rules limits the authority of the court to commit an individual to the care and custody of the Commissioner in an environment that is less restrictive than that of the MSU.

The Division has reviewed the rules and determined that they are necessary and proper for the purpose for which they were originally promulgated. Therefore, pursuant to N.J.S.A. 52:14B-5.1.c(1), N.J.A.C. 10:42B is readopted and shall continue in effect for seven years.

## CORRECTIONS

### (b)

#### THE COMMISSIONER

##### Interjurisdictional Agreements and Statutes

##### Readoption with Amendments: N.J.A.C. 10A:10

Proposed: December 5, 2022, at 54 N.J.R. 2198(a).

Adopted: February 9, 2023, by Victoria L. Kuhn, Commissioner, Department of Corrections.

Filed: February 21, 2023, as R.2023 d.038, **without change**.

Authority: N.J.S.A. 2A:159A-1 et seq., 2A:160-6 et seq., 30:1B-6, 30:1B-10, 30:7C-1 et seq., and 30:7D-1; U.S. Const. Art. 4, § 2, cl. 2; and 18 U.S.C. App. 2 § 2.

Effective Dates: February 21, 2023, Readoption;  
March 20, 2023, Amendments.

Expiration Date: February 21, 2030.

**Summary of Public Comment and Agency Response:**  
**No comments were received.**

##### Federal Standards Statement

The rules readopted with amendments are promulgated pursuant to the authority of the rulemaking requirements of the Department of Corrections (Department), as established at N.J.S.A. 30:1B-6, 30:1B-10, and 30:7C-1 et seq. The rules readopted with amendments comply with, and do not exceed, any related Federal statutes, requirements, or standards. Accordingly, a Federal standards analysis is not required. The Department extends certain courtesies to foreign nationals as set forth at N.J.A.C. 10A:10-2.7 in keeping with the Vienna Convention on Consular Relations (VCCR), but has no direct agreements with foreign consuls.

**Full text** of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 10A:10.

**Full text** of the adopted amendments follows:

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 10A:10-1.4 Forms

(a) The following forms related to the Interstate Corrections Compact are available from classification or social services staff:

1.-6. (No change.)

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

#### SUBCHAPTER 3. INTERSTATE CORRECTIONS COMPACT

##### 10A:10-3.8 Classification summary

(a) Pursuant to the requirements at N.J.A.C. 10A:10-3.7, the Classification Department Supervisor, or designee, of the correctional facility where the inmate is housed shall prepare a classification summary to be forwarded to the Administrator, which contains current information concerning the inmate in areas of:

1.-23. (No change.)