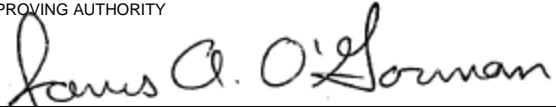
 <b>Corrections and Community Supervision</b>  <b>DIRECTIVE</b>	TITLE <b>Protective Custody Status</b>		NO. 4948
			DATE 11/17/2020
SUPERSEDES DIR# 4948 Dtd. 06/14/18	DISTRIBUTION A B	PAGES PAGE 1 OF 6	DATE LAST REVISED 12/24/2020
REFERENCES (Include but are not limited to) See Section II	APPROVING AUTHORITY 		

- I. PURPOSE:** This directive sets forth the minimum conditions of confinement for inmates in Protective Custody Status within the Department. Inmates in this status shall be housed in an area which will best maximize the safety and security of both the inmates and the facility. Whenever the provisions of any part of this directive are inconsistent with the provisions of a Federal or State Court Order, such Court Order shall be controlling.
- II. REFERENCES**
- Title 28 CFR 115.41
  - 7 NYCRR Part 254 & Part 330
  - Honeycutt v. Coughlin Stipulation
  - ACA Expected Practices
    - 5-ACI-4A-04, 5-ACI-4A-05, 5-ACI-4A-07, 5-ACI-4A-08, 5-ACI-4A-20, 5-ACI-4A-21, 5-ACI-4A-22, 5-ACI-4A-23, 5-ACI-4A-24, 5-ACI-4A-25, 5-ACI-4A-27, 5-ACI-3D-03
    - 1-ABC-3D-03
  - Directives #4027A, #4040, #4091, #4483, #4500, #4933
- III. DEFINITIONS**
- A. Voluntary Protective Custody Inmate: An inmate who is a potential victim or a witness likely to be intimidated, or who lacks the ability to live in the general facility community and who may, for good cause, be restricted from communication with the general inmate population, and who voluntarily accepts admission into Protective Custody Status.
- B. Involuntary Protective Custody Inmate: An inmate who may be a potential victim or a witness likely to be intimidated, or who lacks the ability to live in the general facility community and who may, for good cause, be restricted from communication with the general inmate population, and who does not voluntarily accept admission into Protective Custody Status.
- C. Sexual Victimization Involuntary Protective Custody Inmate: An inmate who is appropriate for Involuntary Protective Custody solely because he or she is at high risk for sexual victimization as determined by an assessment conducted pursuant to Directive #4027A, "Sexual Abuse Prevention & Intervention – Inmate-on-Inmate," and Title 28 C.F.R. §115.41 of the National Prison Rape Elimination Act (PREA) Standards, or following a report that the inmate was the victim of sexual abuse, where an assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers, and who does not voluntarily accept admission into Protective Custody Status.

#### IV. ADMISSION AND TRANSFER POLICY

- A. Consistent with the Department's policy of providing appropriate programming, inmates placed in Protective Custody Status will be evaluated and recommended for transfer to facilities where they may be appropriately programmed in general population.
1. The provisions of Section III-A are not applicable to inmates:
    - a. At Reception Centers (all of whom are evaluated and recommended for transfer to facilities where they may be appropriately programmed in general population);
    - b. At Upstate Correctional Facility Special Housing Unit (SHU); or
    - c. Assigned to the Protective Custody Unit at Mid-State Correctional Facility and Woodbourne Correctional Facility or assigned to the Assessment and Program Preparation Unit (APPU) at Clinton Correctional Facility.
  2. Within five days of placing an inmate in Protective Custody, the facility shall complete an Unscheduled Transfer Review (UTR) and submit it via KGNC directly to the Office of Classification and Movement, Central Office.
  3. The Office of Classification and Movement shall determine the appropriate alternative facility placement for the inmate, if any, and issue the Transfer Order.

- B. Voluntary Protective Custody Inmate: An inmate in this status may request reassignment to general population. Such request shall be evaluated and, within 14 days, the inmate shall either be assigned to general population or be subject to a hearing, conducted in accordance with the provisions of 7 NYCRR Part 254, to determine the need for assignment to Involuntary Protective Custody Status.

An inmate in this status shall have such status reviewed every seven days for the first two months, and at least every 30 days thereafter, by a three-member committee consisting of a representative of the facility Executive Staff, a Security Supervisor, and a member of the Guidance and Counseling staff. The results of such review shall be documented on [Form #2170A](#), "Protective Custody Review," and forwarded to the Superintendent for final determination.

- C. Involuntary Protective Custody Inmate: An inmate in this status shall have a hearing conducted within 14 days, in accordance with the provisions of 7 NYCRR Part 254, to determine the need for Protective Custody admission.

An inmate in this status shall have such status reviewed every seven days for the first two months, and at least every 30 days thereafter, by a three-member committee consisting of a representative of the facility Executive Staff, a Security Supervisor, and a member of the Guidance and Counseling Staff. The results of such review shall be documented on [Form #2170A](#) and forwarded to the Superintendent for final determination.

- D. Sexual Victimization Involuntary Protective Custody Inmate: An inmate who is appropriate for Involuntary Protective Custody solely because they are at high risk for sexual victimization as determined by an assessment conducted pursuant to Directive #4027A and Title 28 C.F.R. §115.41 of the National PREA Standards, or following a report that the inmate was the victim of sexual abuse, may be placed in Involuntary Protective Custody on such basis only after an assessment of all available alternatives has been made and a determination has been made that there is no available alternative means of separation from likely abusers. If a facility cannot conduct such an assessment immediately, the facility may hold the inmate in Involuntary Protective Custody for less than 24 hours while completing the assessment using [Form #2168A](#), “Sexual Victimization – Involuntary Protective Custody Recommendation.”
1. If an Involuntary Protective Custody assignment is made pursuant to Section D above, the assigned Assistant Deputy Superintendent/PREA Compliance Manager or, if the facility does not have an assigned Assistant Deputy Superintendent/PREA Compliance Manager, the facility PREA Point Person must be notified no later than the next business day. The Assistant Deputy Superintendent/PREA Compliance Manager or the facility PREA Point Person shall notify the Associate Commissioner/PREA Coordinator, in writing, of the date and time [Form #2168A](#) was completed, and, if applicable, the date and time of the inmate’s removal from Involuntary Protective Custody. Additionally, the facility shall clearly document:
    - a. The basis for the facility’s concern for the inmate’s safety; and
    - b. Whether a determination has been made that there is no available alternative means of separation from likely abusers, including documentation of what alternatives were considered and assessed to be unavailable.

This information will be recorded on [Form #2168A](#). Placement in Involuntary Protective Custody pending a hearing may only be authorized by the Watch Commander or above.

NOTE: If the inmate is placed in Involuntary Protective Custody prior to completion of the recommendation form, the assessment of all available alternatives must be completed within 24 hours of admission.
    - c. An inmate placed in Involuntary Protective Custody on this basis shall have a hearing conducted within 14 days, in accordance with the provisions of 7 NYCRR Part 254, to determine the need for Protective Custody admission.
  2. Inmates placed in Protective Custody on this basis shall have access to programs, privileges, education, and work opportunities to the extent possible.

If the facility restricts access to programs, privileges, education, or work opportunities, the facility shall document on [Form #4948A](#), “Restriction of Inmate’s Program-Participation”:

    - a. The opportunities that have been limited;
    - b. The duration of limitation; and
    - c. The reasons for such limitation.
  3. The facility shall assign such inmates to Involuntary Protective Custody on this basis only until an alternative means of separation from likely abusers can be arranged, and such assignment shall not ordinarily exceed a period of 30 days.

An inmate in Involuntary Protective Custody on this basis shall have such status reviewed every seven days for the first two months, and at least every 30 days thereafter, by a three-member committee consisting of a representative of the facility Executive Staff, a Security Supervisor, and a member of the Guidance and Counseling staff. The results of such review shall be documented on [Form #2170A](#) and forwarded to the Superintendent for final determination.

## V. CONDITIONS OF CONFINEMENT

- A. **Out-of-Cell Time:** **Except for restrictions imposed as a result of a disciplinary action**, inmates will be afforded the opportunity to be out of their cells for a minimum of three hours per day between the hours of 7:00 a.m. and 11:00 p.m. A minimum of one hour out-of-cell time shall be scheduled for outdoor exercise. The additional two hours of out-of-cell time may be used for, but not limited to, the following activities (see Section VI, "Exceptions"):
1. Gallery or yard recreation;
  2. Meals;
  3. Telephone calls;
  4. Showers;
  5. Visiting;
  6. Gallery programs; and/or
  7. Additional outdoor exercise.
- B. **Exercise/Recreation**
1. Weather permitting, one hour of exercise per day will be out-of-doors, excluding the time necessary to process and escort the inmate to and from the outdoor exercise area.
  2. Gallery recreation will include opportunities for inmates to participate in passive board games, watch television, play cards, read, or write outside of their cells.
- C. **Meals**
1. Inmates in Protective Custody Status will be afforded the opportunity to participate in two meals per day outside of their cell (see Section VI).
  2. Inmates will be provided meals of the same type as the meals available to inmates in general population and in sufficient quantity to be nutritionally adequate.
- D. **Religious Programs:** The facility Chaplains will visit inmates in Protective Custody Status once a week to provide religious counseling.
- E. **Counseling Services:** A representative of the Guidance and Counseling Unit, Supervising Offender Rehabilitation Coordinator (SORC) or Offender Rehabilitation Coordinator (ORC), shall visit the area where inmates who are assigned Protective Custody Status are housed at minimum once weekly.
- F. **Law Library Services:** The facility Law Library will provide a list of legal books, journals, and papers in the facility Law Library that are available to inmates in Protective Custody Status. This list will be made available to these inmates upon request.
1. An inmate may obtain legal materials from the Law Library by submitting a written request subject to the following conditions:
    - a. A maximum of two items may be ordered at one time;

- b. The Law Library will deliver the requested items, if available, within 24 hours of receiving the request; and
  - c. Inmates may retain said legal materials for a period of no less than 16 hours, but not more than 24 hours at a time.
2. Inmates may receive the legal services (e.g., legal research, photocopying, typing) normally available to the general population (see Directive #4483, "Law Libraries, Inmate Legal Assistance and Notary Public Services").
  3. Inmates housed on units with WIFI accessibility may request a Law Library Tablet (green), as set forth in the memorandum dated April 28, 2020, "Law Library SHU Tablet Distribution and Utilization."
  4. Notwithstanding the requirements of Section IV-F-2 above, no inmate advisers or inmate law clerks will be permitted to visit inmates in Protective Custody Status.
  5. All communications between inmates in Protective Custody Status and the Law Library will be monitored by facility staff.
  6. All inmate legal materials going to or coming from the Law Library will be subject to search.
  7. Whenever a Law Library service item is deemed to be improper or inappropriate, it shall be referred to the Area Supervisor for a determination as soon as possible. The staff member doing this shall notify the inmate and record the action in the appropriate logbook.
  8. An inmate may be deprived of Law Library services by issuance of a Deprivation Order after consultation with Counsel's Office.
  9. Notary services will be available two times per week.
- G. General Library Services: There shall be available to inmates in Protective Custody Status, General Library materials in the quantity equal to at least two books and one magazine/periodical for each inmate. This reading material will be rotated every 30 days.
1. Inmates may request and maintain, in their cells, reading material as follows: books, magazines, or newspapers (not to exceed an aggregate total of ten, excluding legal materials) for a period of at least one week.
  2. Inmates assigned to Protective Custody Status shall be permitted access to other materials in the general facility library through a referral system.
- H. Education: Inmates in Protective Custody Status will be offered the opportunity to participate in a cell study program. Education Counselors, Teachers, or other appropriate staff members may visit the Protective Custody inmates, as needed, to provide assistance to any inmate participating in a cell study program.
- I. Commissary/Packages: Except for restrictions imposed as a result of a disciplinary action, packages and commissary will be delivered to the inmates in Protective Custody Status. Inmates will not go to the package room or commissary to pick up their own items.
- J. Telephone Calls: Except for restrictions imposed as a result of a disciplinary action, inmates in Protective Custody Status will be permitted to participate in the Telephone Home Program.

- K. Visitation/Correspondence: Except for restrictions imposed as a result of a disciplinary action or restrictions imposed pursuant to appropriate Departmental directives, there shall be no limitations on the visitation and correspondence for inmates in Protective Custody Status.
- L. Family Reunion Program: Inmates in Protective Custody Status shall be eligible to apply for participation in the Family Reunion Program pursuant to Departmental Directive #4500, "Family Reunion Program."
- M. Inmate Grievance Program
1. Inmates in Protective Custody Status shall have access to the Inmate Grievance Program in accordance with the requirements of Departmental Directive #4040, "Inmate Grievance Program." The Superintendent shall establish procedures to ensure that the grievance mechanism is available to inmates in Protective Custody Status without jeopardizing institutional safety and security.
  2. Inmates in Protective Custody Status are not required to personally appear before the grievance committee.
- N. Laundry Services: Laundry services for inmates in Protective Custody Status shall be provided in the same manner and with the same frequency as provided to inmates in general population.
- O. Personal Property: Inmates will be issued their personal property when assigned to Protective Custody Status, subject to safety and security considerations.

NOTE: When housed in SHU, Protective Custody inmates will be subject to the rules and regulations contained in Directive #4933, "Special Housing Units."

- VI. EXCEPTIONS:** This directive shall not apply to the operation of Green Haven Correctional Facility's Protective Custody Unit, which is governed by the provisions of the Stipulation in the action entitled Honeycutt v. Coughlin.

The additional two hour out-of-cell time requirement in Section V-A, and the out-of-cell meal requirement in Section V-C, shall not apply to Clinton Correctional Facility because the limitations of the physical configuration of the area housing inmates in Protective Custody Status do not afford adequate protection for such activities. The out-of-cell meal requirement in Section V-C shall also not apply to Upstate or Five Points Correctional Facilities because these facilities are specifically designed for meals to be provided within each double-occupancy cell when required.

- VII. LOCAL RULES AND REGULATIONS:** Each facility housing inmates in Protective Custody Status shall promulgate rules and regulations for care and custody, and submit them to the Deputy Commissioner for Correctional Facilities for review and approval.

- VIII. LOGBOOKS:** A logbook will be assigned to each area housing Protective Custody inmates and maintained in accordance with Directive #4091, "Logbooks."