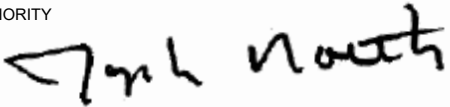
 <b>Corrections and Community Supervision</b>  <b>DIRECTIVE</b>	TITLE <b>Protective Custody Status</b>		NO. 4948
			DATE 06/02/2022
SUPERSEDES DIR #4948 Dtd. 11/17/20	DISTRIBUTION A B	PAGES PAGE 1 OF 7	DATE LAST REVISED
REFERENCES (Include but are not limited to) See Section II	APPROVING AUTHORITY 		

- I. PURPOSE:** This directive sets forth the minimum conditions of confinement for incarcerated individuals in Protective Custody status within the Department. Incarcerated individuals in this status shall be housed in an area which will best maximize the safety and security of both the incarcerated individuals and the facility. Notwithstanding, they will not be housed in segregated confinement (Special Housing Unit) for any reason related to their Protective Custody status.

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**

- HALT Solitary Confinement Law
- Title 28 CFR Section 115.41
- 7 NYCRR Part 254 & Part 330
- 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
- Directives #4027, #4040, #4091, #4483, #4500, #4932, #4933
- Sexual Victimization Prevention Policy Manual (SVPPM)

**III. DEFINITIONS**

- A. Voluntary Protective Custody (VPC) Incarcerated Individual: An incarcerated individual 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 population, and who voluntarily accepts admission into Protective Custody status.
- B. Involuntary Protective Custody (IPC) Incarcerated Individual: An incarcerated individual 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 population, and who does not voluntarily accept admission into Protective Custody status.

- C. Sexual Victimization Involuntary Protective Custody Incarcerated Individual: An incarcerated individual 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 the Sexual Victimization Prevention Policy Manual (SVPPM) and Title 28 C.F.R. §115.41 of the National Prison Rape Elimination Act (PREA) Standards, or following a report that the incarcerated individual 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.
- D. Segregated Confinement: Segregated confinement is defined as the confinement of an incarcerated individual in any form of cell confinement for more than 17 hours a day other than in a facility-wide emergency or for the purpose of providing medical or mental health treatment. Cell confinement that is implemented due to medical or mental health treatment shall be within a clinical area in the correctional facility or in as close proximity to a medical or mental health unit as possible.
- E. Residential Rehabilitation Unit (RRU): RRU is defined as a separate housing unit for therapy, treatment, and rehabilitative programming of incarcerated people who have been determined to require more than 15 days of segregated confinement pursuant to Department proceedings. Such units shall be therapeutic and trauma-informed and aim to address individual treatment and rehabilitation needs and underlying causes of problematic behaviors. RRUs will house not only incarcerated individuals from Special Housing Unit (SHU) but also "Special Populations" who commit acts of misbehavior and have been diverted from SHU as well as PC/IPC or Administrative Segregation.

#### IV. REVIEW AND APPROVAL

- A. Voluntary Protective Custody (VPC): The employee assigned to investigate an incarcerated individual's request for Protective Custody shall submit [Form #2183](#), "Voluntary Protective Custody Status Consideration Form;" [Form #2183A](#), "Voluntary Protective Custody Investigation Form;" and all relevant documentation to the Superintendent or designee, for a final determination. Upon completion of the review process by the Superintendent, [Form #2183](#) and [Form #2183A](#) will be sent to the Director of Special Housing/Incarcerated Individual Disciplinary Programs (refer to Section V-B).

NOTE: An incarcerated individual may decline PC by signing [Form #2183B](#), "Voluntary Protective Custody Refusal Form." This in no way precludes a security supervisor from recommending involuntary PC placement if warranted.

- B. Involuntary Protective Custody (IPC): An incarcerated individual as defined in Section III-B shall be placed on IPC status, with the written approval of the Superintendent or designee, upon review of a security supervisor's recommendation as documented on [Form #2168](#), "Administrative Segregation/Involuntary Protective Custody Recommendation" (refer to Section V-C).

#### V. ADMISSION AND TRANSFER POLICY

- A. Consistent with the Department's policy of providing appropriate programming, incarcerated individuals placed in PC status will be evaluated and recommended for transfer to facilities where they may be appropriately programmed in general population.

1. The provisions of subsection V-A are not applicable to incarcerated individuals:
    - 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. Assigned to a PC Unit at Mid-State, Attica, Clinton, Elmira, Great Meadow, Green Haven, Hudson, Sing Sing, or Woodbourne Correctional Facility; or assigned to the Assessment and Program Preparation Unit (APPU) at Clinton Correctional Facility.
  2. Within five days of placing an incarcerated individual in PC, the facility shall complete an Unscheduled Transfer Review (UTR) and submit it, using the KGNC system, 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 incarcerated individual, if any, and issue the Transfer Order.
- B. Voluntary Protective Custody (VPC): An incarcerated individual in this status may request reassignment to general population. Such request shall be evaluated and, within 14 days, the incarcerated individual shall either be assigned to general population or be subject to a hearing, conducted in accordance with the provisions of Directive #4932, "Chapter V, Standards Behavior & Allowances," to determine the need for assignment to IPC status.

An incarcerated individual 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 (IPC): An incarcerated individual in this status shall have a hearing conducted within 14 days, in accordance with the provisions of Directive #4932, to determine the need for PC admission. If the incarcerated individual is transferred to another facility prior to the hearing's completion, the hearing must be completed at the receiving facility. This must be done even if the reason for the recommendation no longer exists due to the transfer.

An incarcerated individual 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:** An incarcerated individual who is appropriate for IPC solely because they are at high risk for sexual victimization as determined by an assessment conducted pursuant to the SVPPM and Title 28 C.F.R. §115.41 of the National PREA Standards, or following a report that the incarcerated individual was the victim of sexual abuse, may be placed in IPC on such basis only after an assessment of all available alternatives have 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 incarcerated individual in IPC for less than 24 hours while completing the assessment using [Form #2168A](#), "Sexual Victimization – Involuntary Protective Custody Recommendation."
1. If an IPC assignment is made pursuant to subsection V-D, 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 incarcerated individual's removal from IPC. Additionally, the facility shall clearly document:
    - a. The basis for the facility's concern for the incarcerated individual's safety.
    - 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 IPC pending a hearing may only be authorized by the Watch Commander or above.

NOTE: If the incarcerated individual is placed in IPC prior to completion of the recommendation form, the assessment of all available alternatives must be completed within 24 hours of admission.
    - c. An incarcerated individual placed in IPC on this basis shall have a hearing conducted within 14 days, in accordance with the provisions of Directive #4932, to determine the need for PC admission.
  2. Incarcerated individuals placed in PC 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 Incarcerated Individual's Program Participation":

    - a. The opportunities that have been limited
    - b. The duration of limitation
    - c. The reasons for such limitation
  3. The facility shall assign such incarcerated individuals to IPC 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 incarcerated individual in IPC 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.

## VI. CONDITIONS OF CONFINEMENT

- A. **Out-of-Cell Time**: **Except for restrictions imposed as a result of a disciplinary action**, Protective Custody units, must at a minimum, conform to requirements governing RRUs. Incarcerated individuals will be offered at least six hours of daily out-of-cell congregate programming, services, treatment, recreation, activities and/or meals, with an additional hour for recreation, a minimum of one hour out-of-cell time shall be scheduled for outdoor exercise. The additional six hours of out-of-cell time may be used for, but not limited to, the following activities :
1. Congregate gallery, dayroom, or yard recreation
  2. Congregate meals
  3. Telephone calls
  4. Showers
  5. Visiting
  6. Gallery programs
  7. Additional outdoor exercise
  8. Peer-led programs
  9. Volunteer programs
- 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 incarcerated individual to and from the outdoor exercise area.
  2. Gallery recreation will include opportunities for incarcerated individuals to participate in passive board games, watch television, play cards, read, or write outside of their cells.
- C. **Meals**: Incarcerated individuals will be provided meals of the same type as the meals available to incarcerated individuals in general population and in sufficient quantity to be nutritionally adequate.
- D. **Religious Programs**: The facility Chaplains will visit incarcerated individuals in PC 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 incarcerated individuals who are assigned PC 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 incarcerated individuals in PC status. This list will be made available to these incarcerated individuals upon request.

1. An incarcerated individual 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.
    - c. Incarcerated individuals may retain said legal materials for a period of no less than 16 hours, but not more than 24 hours at a time.
  2. Incarcerated individuals may receive the legal services (e.g., legal research, photocopying, typing) normally available to the general population (see Directive #4483, "Law Libraries, Incarcerated individual Legal Assistance and Notary Public Services").
  3. Incarcerated individuals housed on units with Wi-Fi 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 VI-F-2, no incarcerated advisers or incarcerated law clerks will be permitted to visit incarcerated individuals in PC status.
  5. All communications between incarcerated individuals in PC status and the Law Library will be monitored by facility staff.
  6. All incarcerated individual 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 incarcerated individual and record the action in the appropriate logbook.
  8. An incarcerated individual 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 incarcerated individuals in PC status, General Library materials in the quantity equal to at least two books and one magazine/periodical for each incarcerated individual. This reading material will be rotated every 30 days.
1. Incarcerated individuals may request and maintain, in their cells, reading material as follows: books, magazines, or newspapers (not to exceed an aggregate total of 10, excluding legal materials) for a period of at least one week.
  2. Incarcerated individuals assigned to PC status shall be permitted access to other materials in the general facility library through a referral system.
- H. Education: Incarcerated individuals in PC status will be offered the opportunity to participate in a cell study program. Education Counselors, Teachers, or other appropriate staff members may visit the PC incarcerated individuals, as needed, to provide assistance to any incarcerated individual 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 incarcerated individuals in PC status. Incarcerated individuals 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, incarcerated individuals in PC 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 incarcerated individuals in PC.
  - L. Family Reunion Program: Incarcerated individuals in PC status shall be eligible to apply for participation in the Family Reunion Program pursuant to Departmental Directive #4500, "Family Reunion Program."
  - M. Incarcerated Grievance Program
    - 1. Incarcerated individuals in PC status shall have access to the Incarcerated Grievance Program in accordance with the requirements of Departmental Directive #4040, "Incarcerated Grievance Program." The Superintendent shall establish procedures to ensure that the grievance mechanism is available to incarcerated individuals in PC status without jeopardizing institutional safety and security.
    - 2. Incarcerated individuals in PC status are not required to personally appear before the grievance committee.
  - N. Laundry Services: Laundry services for incarcerated individuals in PC status shall be provided in the same manner and with the same frequency as provided to incarcerated individuals in general population.
  - O. Personal Property: Incarcerated individuals shall have access to all of their personal property when assigned to PC status, unless an individual determination of significant and unreasonable risk is rendered.
  - P. Programs and/or Work Assignments: Incarcerated individuals in PC status shall have access to programs and work assignments comparable to core programs and types of work assignments in general population.
- VII. LOCAL RULES AND REGULATIONS:** Each facility housing incarcerated individuals in Protective Custody status shall promulgate rules and regulations for care, custody, and conditions of confinement as outlined in Section VI of this directive and submit them to the Deputy Commissioner for Correctional Facilities for review and approval, annually by January 31<sup>st</sup>.
- VIII. LOGBOOKS:** A logbook will be assigned to each area housing Protective Custody incarcerated individuals and maintained in accordance with Directive #4091, "Logbooks."