

**DIVISION CIRCULAR #16
(N.J.A.C. 10:42B)**

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF DEVELOPMENTAL DISABILITIES**

EFFECTIVE DATE: October 6, 2008

ISSUED DATE: October 16, 2008

(Rescinds DC #16, "Moderate Security Unit" issued February 7, 2006)

- I. **TITLE:** Moderate Security Unit (MSU)
- II. **PURPOSE:** Pursuant to N.J.S.A. 30:4-25.13 et seq., the purpose of this chapter is to establish a procedure for admission, retention and release of the individuals in the Moderate Security Unit (MSU).
- III. **SCOPE:** This chapter applies to all components of the Division.
- IV. **POLICY:** The MSU is permitted to use a Time Out Room, which is a room reserved for the purpose of time out, that complies with the requirements of Appendix A, which is attached to this chapter. A Time Out Room shall not be used for the convenience of staff or as a substitute for programming.
- V. **GENERAL STANDARDS:**

NOTE: The remainder of this circular is the rules for the Moderate Security Unit as they appear in the New Jersey Administrative Code at N.J.A.C. 10:42B.



Kenneth W. Ritchey
Assistant Commissioner

SUBCHAPTER 1. GENERAL PROVISIONS

10:42B-1.1 Purpose

Pursuant to N.J.S.A. 30:4-25.13 et seq., the purpose of this chapter is to establish a procedure for admission, retention and release of individuals 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.

10:42B-1.2 Scope

This chapter applies to all components of the Division.

10:42B-1.3 Definitions

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

“Assistant Commissioner” means the Assistant Commissioner of the Division of Developmental Disabilities.

“Division” means the Division of Developmental Disabilities.

“Individual Habilitation Plan” (IHP) means a written, individualized habilitation plan, consistent with the requirements of N.J.S.A. 30:6D-10 through 12, developed with the individual and/or his or her legal guardian, and the IDT.

“Interdisciplinary Team (IDT)” means a group that shall minimally consist of the individual receiving services, the plan coordinator, the legal guardian and/or the Division case manager. The IDT may include the parents or family member at the preference of the person served or guardian. In addition, members may include: advocates and friends, those persons who work most directly with the individual served, and professionals and representatives of service areas who are relevant to the identification of the individual’s needs and preferences and the design and evaluation of programs to meet them.

“Moderate Security Unit” (MSU) means a specialized institutional treatment facility authorized and established by the Assistant Commissioner of the Division, within the Department of Human Services, which is used as an alternative to detention in a correctional facility or as a residential requirement for probation and characterized primarily by physical security for the confinement of males, 18 years of age or older, who

are adjudicated to be dangerous to self, others or property and in need of a highly structured therapeutic treatment program.

“Moderate Security Unit Admissions Review Committee” means a group of professionals who review all proposed court-ordered admissions to the MSU. The purpose of the review shall be to determine if the individual’s offending behavior(s) can be addressed within the range of services at the MSU. Committee members consist of:

1. The Director of the MSU or his or her designee;
2. The MSU Coordinator;
3. A representative of the Administrative Practice Office;
4. A representative of the Regional Assistant Director from the referring region; and
5. A representative of the Chief Executive Officer of the Developmental Center where the MSU is located.

“Moderate Security Unit Coordinator” means the individual designated by the Assistant Commissioner of the Division to be the contact between the MSU staff, Central Office, the referring Division regional office and the court system.

“Moderate Security Unit Director” means the individual who oversees the operations of the MSU.

SUBCHAPTER 2. ADMISSION TO THE MSU

10:42B-2.1 Admission to the MSU by court order

- (a) An individual shall not be admitted to the MSU unless the admission is ordered by a court of competent jurisdiction pursuant to N.J.S.A. 30:4-25.14.
- (b) An individual shall not be permitted to voluntarily admit himself to the MSU.

SUBCHAPTER 3. PROCEDURES

10:42B-3.1 Procedures Prior to Admission to MSU

- (a) The following procedures shall be implemented prior to admission of an individual to the MSU.
 1. If the Division is advised by a court of competent jurisdiction that an individual, who may be developmentally disabled, is involved in a criminal proceeding before the court, the Division shall determine whether the individual is eligible for functional services provided by the Division in accordance with N.J.A.C. 10:46.

2. If the Division determines that the individual is not eligible for services, the individual may appeal the ineligibility decision and request a hearing in the Office of Administrative Law in accordance with N.J.A.C. 10:48. The regional office shall advise the party making the referral to the MSU, in writing, and advise the court.
3. If the individual is determined eligible for Division services, or if the individual had been determined eligible for Division services prior to the filing of criminal charges, the Division shall request the MSU Director to determine whether the individual is appropriate for, and will benefit from, admission to the MSU and whether a vacancy exists.
4. The MSU Director will schedule a meeting with the MSU Admissions Committee to review the record to determine if the individual will benefit from the services of the MSU. The MSU Director and the Admissions Committee may determine that an individual may not benefit from the services at the MSU because the individual has a severe psychiatric disorder or a low level of functioning or lack of communication skills which would preclude him from participating in individual or group counseling.
5. If the individual is appropriate for, and will benefit from, admission to the MSU and a vacancy exists, the MSU Director shall advise the court and request an order to require the individual to be housed at and participate in the program at the MSU. Since admission to the MSU can only be made by an order of the court, the MSU Director or the MSU Coordinator shall offer to assist the court in drafting the order to the MSU.
6. If the MSU Director is not certain about the appropriateness of the admission of the individual, the MSU Director may recommend to the court that the individual be admitted to the MSU for a time-specified period to evaluate the individual's appropriateness for the program at the MSU. If the charges are dropped or, for any other reason, the court does not sentence the individual, the court shall notify the MSU Director and the individual shall be released pursuant to the specific directions in the court order or in the absence of specific directions in the court order, the MSU shall begin the transition process for the release of the individual to a less restrictive setting.

SUBCHAPTER 4. ADMISSION TO THE MSU

10:42B-4.1 Action of the court for admission to the MSU

- (a) After the MSU Director advises the court that the individual may be admitted to the facility in accordance with the provisions in N.J.A.C. 10:42B-3.1, the court may order the individual be housed at and participate in the program at the MSU:

1. As a condition of probation;
 2. Until disposition of pending criminal charges against the individual; or
 3. Into the care and custody of the Commissioner of Human Services, in accordance with the provisions of N.J.S.A. 2C:4-6, if the court finds that the individual is unfit to proceed because it has been determined that he is unfit to stand trial. The Division will make every effort to restore the individual to competency to stand trial. Throughout this process, the individual's competency is periodically reviewed by a court of competent jurisdiction to determine if the individual shall remain a Class I commitment, pursuant to N.J.S.A. 30:4-25.1(b) or be treated as a voluntary recipient of Division services. When the court dismisses the charges, pursuant to N.J.S.A. 2C:4-6, the MSU shall begin the transition process for the release of the individual to a less restrictive setting.
- (b) The MSU Director shall notify the individual, legal guardian, his legal representative, if applicable, MSU Coordinator and the referring region of the date of admission to the MSU.
- (c) While the individual is in the MSU, the referring region shall keep the case open and shall be responsible to attend any IDT meetings.

SUBCHAPTER 5. COURT REVIEWS

10:42B-5.1 Court review of orders and possible actions

- (a) The court shall review the order to admit an individual to the MSU at least every six months. The court shall notify the MSU Director of the date of the review at least 30 days prior to that date.
- (b) Seven days prior to the court review, the MSU Director shall report to the court, in writing, regarding the status and progress of the individual admitted to the MSU and also send a copy of the report to the individual or his legal guardian, legal representative, if applicable, the county prosecutor, attorney, the MSU Coordinator, the Division's Administrative Practice Office, regional case manager and any other person as ordered by the court.
- (c) In the case of an individual admitted to the MSU as a condition of probation, the MSU Director may, as he or she determines appropriate, recommend to the court, in his or her report, that the individual be transferred to a less restrictive environment. No move shall be made without a court order during probation.
1. The court may modify its order concerning probation in accordance with the recommendations of the MSU Director.

2. If the order is modified, the court can order any Division employee or service provider to provide reports to the court as directed.

SUBCHAPTER 6. RELEASE FROM THE MSU

10:42B-6.1 Provisions for the release from the MSU

- (a) An individual shall be released from the MSU when his probation period ends, upon determination by the Court that the individual has not violated the terms and conditions of his probation, or his commitment to the care and custody of the Commissioner of Human Services ends or upon disposition of pending criminal charges.
- (b) No less than six months before the individual's period of probation or commitment ends, the MSU Director shall advise the individual and/or legal guardian that he may request continued services from the Division after his release from the MSU.
- (c) Sixty (60) days prior to the individual's release date, the MSU Director and the MSU Coordinator shall develop a plan of appropriate Division services to be provided or made available to the individual after his release from the MSU.
 1. The Interdisciplinary Team shall prepare an IHP to aid in the transition in accordance with N.J.S.A. 30:6D-10 through 12.
 2. The referring region of community services shall continue to be responsible to identify a community placement unless the individual's IHP provides a substantiated basis for requiring an alternative residential arrangement at the time of release.
- (d) If the individual is his own guardian and does not desire services from the Division, he shall be released once the terms of the court order have been fulfilled. He shall then be discharged from services by the Community Services Regional Office where he was initially admitted to services.
- (e) If the individual is his own guardian and does not desire services but staff from the MSU believes he would continue to benefit from Division services, the individual shall be asked to sign a release against professional advice. A representative of the Regional Assistant Director from the referring region shall meet with the individual and provide full information in a format and manner that is understandable to him, regarding the options available to him, including the right to receive services in the least restrictive setting, the right to refuse services and the right to appeal the decisions of the Division regarding his treatment and placement.

- (f) If the individual has a legal guardian, the legal guardian shall be advised of the individual's wish to leave. The Division will work with the legal guardian to discuss placements that are available and what services the Division can provide, within available resources.

- (g) Before an individual who has committed a sexually violent offense, as defined in N.J.S.A. 30:4-27.26, is released from the MSU, six months prior to the end of probation of commitment, the MSU Director shall require that the individual be evaluated by a psychiatrist for risk assessment and possible referral for commitment under the Sexually Violent Predator Law, N.J.S.A. 30:4-27.25.
 - 1. If the evaluation determines that the individual is likely to re-offend, the MSU Director shall contact the Division's Administrative Practice Officer (APO).
 - 2. The APO shall contact the Medical Director, Division of Mental Health Services (DMHS) to request a review by the Clinical Assessment Review Panel for commitment.
 - 3. The Medical Director of the DMHS shall advise the APO whether the individual shall be referred to the Attorney General's Office for commitment pursuant to N.J.S.A. 30:4-27.25.

 - 4. If it is determined that the individual cannot be committed pursuant to the Sexually Violent Predator Law, he shall be released from the MSU in accordance with the provision of (a) through (f) above.

- (h) If the individual is required to register under Megan's Law and wishes to leave, he must provide an address where he will live to the local law enforcement authorities 10 days prior to his release. The Department of Human Services police shall be advised of the date of release in order to notify the county prosecutor. Staff of the MSU shall assist the individual with registering with the local police five days prior to his release.

SUBCHAPTER 7. COMMITMENT TO FUNCTIONAL SERVICES

10:42B-7.1 Commitment to the care and custody of the Commissioner of Human Services

Nothing shall be construed to limit the authority of the court to commit an individual to the care and custody of the Commissioner of Human Services in accordance with the provisions of N.J.S.A. 30:4-25.1 for admission to functional services in an environment that is less restrictive than that of the MSU.